an approved mortgagee. Such application shall be submitted to the local HUD office of an FHA approved form. No application shall be considered unless accompanied by the exhibits required by the form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. An application may be made only for a commitment that provides for the insurance of the mortgage upon completion of the improvements, except that with respect to purchase transactions, the commitment may provide, in accordance with standards established by the Commissioner, for the completion of specified repairs after endorsement.

* * * * *

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502-0029.)

4. In § 207.32a, paragraph (f)(4) is removed and reserved, and paragraph (f)(3) is revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(f) (1) * * *

(2) * * *

(3) For purposes of this paragraph (f), the term "high-cost area factor" refers to the percentage increases over basic dollar limitation per dwelling until authorized in § 207.4(c). The term "major building component" includes roof structures; ceiling, wall, or floor structures; foundations; and plumbing, heating, air conditioning, or electrical systems.

(4) [Reserved]

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. Section 255.103 is revised to read as follows:

§ 255.103 Duration of approval.

Initial certification of a lender as an approved coinsurer under § 255.102 will be valid until the Secretary's authority to coinsure pursuant to this part shall have expired, unless such approval is withdrawn under § 255.104. A temporary lapse in the Secretary's authority to coinsure shall not terminate lenders' approved coinsurer status. However, lenders may not, during any such lapse, issue commitments, reopen expired commitments, or approve mortgage modifications.

6. Section 255.201 is revised to read as follows:

§ 255.201 Application.

The application for a commitment to make a coinsured mortgage loan on a project shall be submitted to the lender, as agent for the Secretary, by the sponsor of the project. The application shall be accompanied by such exhibits as may be required by the lender to enable the lender to comply with requirements for coinsurance of the mortgage established under this part. An application may be made only for a commitment that provides for the insurance of the mortgage upon completion of the improvements, except that with respect to purchase transactions, the commitment may provide, in accordance with standards established by the Commissioner, for the completion of specified repairs after endorsement.

7. In § 255.228, paragraph (d) is removed and reserved, and paragraph (c)(2) is revised to read as follows:

§ 255.228 Development of property.

* * * * *

(c) (1) * * *

(2) For purposes of this paragraph (c), the term "high-cost area factor" refers to the percentage increases over basic dollar limitations per dwelling unit authorized in § 255.211(a)(4). The term "major building component" includes roof structures; ceiling, wall, or floor structures; foundations; and plumbing, heating, air conditioning, or electrical systems.

(d) [Reserved]

* * * * *

8. Paragraph (a) of § 255.235 is revised and a note is added to the end of the section to read as follows:

§ 255.235 Certificate of actual cost—contents in general.

(a) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form approved by the Commissioner, shall be submitted to the lender before endorsement and upon completion of the improvements to the satisfaction of the lender. In the case of a purchase transaction, where the commitment provides for the completion of specified repairs after endorsement as provided in § 255.201, a supplemental certificate of actual cost will be submitted covering such repairs. Cost certification is not required in those refinancing transactions where 70 percent of value is the controlling mortgage limitation.

* * * * *

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502-0044.)

9. Section 255.401 is revised to read as follows:

§ 255.401 Insurance endorsement of mortgage.

Upon compliance with a commitment, the Commissioner will insure the lender against a portion of losses resulting from nonpayment of the debt, evidencing the insurance by an appropriate endorsement placed on the original credit instrument, which will identify the regulations under which the loan is insured and the date of insurance. Except in the case of a purchase transaction where the commitment provides for the completion of specified repairs after endorsement as provided in § 255.201, the lender shall, to obtain insurance endorsement, certify to the completion of repairs and improvements, and inspections thereof. The lender shall also certify to the satisfaction of all conditions of the commitment, as evidenced by submission to the Commissioner of the commitment, and supporting documents, such as note, mortgage, and any other exhibits required by the terms of the commitment. The mortgage shall be insured from the date of the endorsement of the credit instrument by the Commissioner, HUD Area Manager, Service Office Supervisor or other designee. The Commissioner and the lender shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract and been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and the provisions of the Act.

Authority: Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 14, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-17605 Filed 7-3-84; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773 and 870

Abandoned Mine Reclamation Fund Fee Collection and Coal Production Reporting

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

ACTION: Final Rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has revised 30 CFR Part 870, regarding the Abandoned Mine Reclamation Fund, fee collection requirements and coal production reporting procedures. These changes provide further administrative and enforcement procedures and options for OSM to ensure a more efficient and effective collection effort. The changes include certain management activities for the collection of reclamation fees and provide a range of compliance activities that include investigations, reports, audits and debt collection and litigation procedures. The rule will also require as a permit condition the continued payment of reclamation fees for coal produced under the permit for sale, transfer or use.

EFFECTIVE DATE: August 6, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Phyllis G. Thompson, Chief, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Room 5401-L, Washington, D.C. 20240, Telephone (202) 343-7937.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA) establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. The program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal law.

Section 402 of SMCRA provides that "all operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the Fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine or 10 cents per ton, whichever is less." Reclamation fees are to be paid no later than 30 days after the end of each calendar quarter beginning with the first calendar quarter occurring after the date of enactment of SMCRA (August 3, 1977) and ending fifteen years after the date of enactment of SMCRA, unless extended by an Act of Congress.

On October 25, 1978, OSM published regulations implementing the Abandoned Mine Reclamation Program, 43 FR 49932. Regulations relating to the amount and collection of reclamation fees were promulgated in 30 CFR Part 837 on December 13, 1977, 42 FR 62713. This part was redesignated as Part 870, 43 FR 49932 (October 25, 1978). Certain provisions of the Abandoned Mine Reclamation Program regulations were revised on June 30, 1982, 47 FR 28574. On November 30, 1983, OSM published a proposed rule concerning the Abandoned Mine Reclamation Fund fee collection requirements and coal production reporting procedures. For a detailed discussion of the components of the fee collection program, refer to the preamble discussion in the AML Regulations published June 30, 1982, 47 FR 28574.

Numerous comments from the public and representatives of the States, industry, and environmental organizations were received and considered in this rulemaking process. All substantive comments received are addressed in the following preamble.

All comments received as well as the record of the public hearing held are available for inspection in the Administrative Record Room 5124, 1100 L Street, NW., Washington, DC.

II. Discussion of Comments and Rules Adopted

A. General Comments

Three commenters questioned DOI's determination that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. One of the three commenters suggested that the proposed rule would primarily affect small operators. This commenter contends that small operators have recently suffered considerable economic hardship, and that the burden of any decrease in coal production would fall on the small operators. OSM disagrees. It is OSM's opinion that the payment of reclamation fees is a statutorily mandated cost of doing business which creates no particular burden on small operators. The Determination of Effects, completed by OSM prior to proposing these rules, indicated that the annual effect on the economy would be less than one hundred million dollars. Moreover, since OSM has decided not to adopt proposed § 870.9, the economic impact of the final rules will be considerably less.

Two commenters expressed support for OSM's efforts to develop an effective system of fee collection.

B. Proposed § 870.9—Fee Responsibility

The new rule proposed in this Section would have specified the party responsible for reclamation fee payment on the basis of coal ownership without taking into consideration existing contractual agreements for sale or other disposition of the coal, or the payment of royalties and fees between the producer and third parties. OSM has elected not to adopt this proposed rule based on its review and evaluation of comments received.

Several commenters questioned OSM's authority to apply this new requirement retroactively to a number of entities not previously designated as responsible for the reclamation fee payment either by statute or existing regulation. In addition, one commenter contended that this would constitute a large financial burden on such companies, and considered OSM's proposed new definition of "operator" to be contrary to OSM's actions, procedures and past practices. This commenter further stated the OSM-1 (Coal Production and Reclamation Fee Report form) asks for the permit holder to include his State and Federal permit numbers with each return. The commenter stated that nowhere on the form, or in the instructions, is there any reference to the owner of the minerals when severed. This commenter also added that OSM has placed requirements on State permanent regulatory programs for applicants for new and renewal permits to submit proof of fee payment.

Another commenter recommended that the Act be amended to accomplish this substantive proposed change and to expand the scope of those parties responsible for fee payment to the party with economic interest in the mineral. This commenter further stated such an amendment should apply prospectively only, thereby protecting the rights of parties already contracting with operators to mine coal or businesses who have entered into agreements anticipating reclamation fee costs would be borne by one party. A number of commenters questioned OSM's authority to supersede legally existing contracts or agreements, which would have resulted under the proposed regulation. One commenter suggested this proposed regulation would abrogate any lease agreement and disregard State contract law where existing leases designate the operator as the party responsible for governmental extractions and fees. One commenter recommended the party taking the depletion allowance should be the responsible party; this commenter added that the depletion allowance is taken by the operator or parties having operating interests in coal extraction. A few commenters stated the permittee should be the responsible party.

One commenter stated the Act and existing regulations clearly state that the operator is responsible for reclamation fees. This commenter further stated the operator pays the reclamation fees in the absence of written contracts clearly designating the person liable for paying reclamation fees. For these reasons this commenter considered the person who stands to benefit from the sale of the mineral not to be an issue.

OSM has reviewed and evaluated the concerns raised by these commenters and has chosen not to adopt the proposed provision on fee responsibility. OSM, instead, will continue to implement the policies set forth in the Abandoned Mine Land Program's initial rules published in 42 FR 62639 (December 13, 1977).

Section 402 of SMCRA requires that all operators pay a reclamation fee based on coal produced, and section 701(13) defines "operator" as the person. . . . engaged in coal mining who removes . . . the coal. OSM recognizes, however, that in light of the number and variety of business arrangements employed in the coal industry, the term operator is not limitd to the party which acutally removes the coal but is broad enough to include a party who controls or directs that removal. OSM believes that Congress intended the burden of fee payment to fall upon the person or persons who stand to benefit directly from the sale, transfer, or use of coal. As outlined in further detail below, this intent will continue to guide the office in making decisions as to who is liable for the fee. The identification will continue to be made in light of the realities of the business world and will not necessarily turn solely on a literal interpretation of the word "removes."

In the preamble discussion to the initial AML rules, OSM stated its intent to send a preprinted Coal Production and Reclamation Fee Report to all operators listed on the Mining Enforcement and Safety Administration's (MESA's) operator-mine indentification number list to avoid a dual identification system, and reduce administrative and recordkeeping costs to the government and the coal mine operators. Since the inception of this program, OSM has continued to use the operator-mine identification number, currently assigned by the Mine Health and Safety Administration (MSHA), as an identifier for persons or entities engaged in coal production under SMCRA.

Each operator-mine identified on the MSHA operator-mine identification list is sent a preprinted Coal Production and Reclamation Fee Report form OSM-1. OSM has decided to use this existing mechanism to identify the party responsible for filing production reports and payment of reclamation fees. OSM has revised this form, and accompanying instructions, to clearly identify the person or entity whose MSHA identification number appears on the OSM-1 as the party responsible for filing the OSM-1 and making payments of any owed reclamation fee.

If the person or entity identified by the MSHA operator-mine list notifies OSM in writing and produces documentary evidence that it has a business relationship with another person which makes that other person responsible for filing production reports and payment of reclamation fees, OSM then may require the other person to immediately file an amended OSM-1 form with the necessary information and to pay reclamation fees. If after being required to file the form and to pay the fees, the other person fails to file an OSM-1, or fails to pay owed reclamation fees, both the other person and the MSHA identified operator will be held jointly and severally liable for production reporting and reclamation fee payment. In the absence of requiring any other person to file forms and pay fees, OSM will continue to send the OSM-1 form and hold the MSHA operator liable for production report filing and payment of fees.

C. Section 870.15(c)—Post-Judgment Interest

OSM retains this Section as in the previous rule except that the phrase ". . . or until judgment is rendered by a court of competent jurisdiction in an action at law to compel payment of debts" is now removed to ensure that all parties understand that OSM reserves the right to collect post-judgment interest in all unpaid reclamation fee collection cases.

One commenter is in support of this change and three oppose it. The three who oppose it suggest that no interest should accrue where the liability for delinquent fee payments is the subject of ongoing litigation. OSM disagrees. It is OSM's position that the debt becomes due and payable at the time an audit discloses that fees are owing. OSM removed the phrase to clarify that interest will continue to run until the debt is paid. Contrary to what one commenter believes, OSM does not think this amendment will deter legitimate challenges. An operator whose challenge is entirely successful will not be assessed the fees or the interest.

OSM agrees with the comment that the proposed amendment should be applied prospectively only. This section will become effective 30 days following publication in the **Federal Register**.

D. Section 870.15(c), Interest Rate Payments

OSM has added a clarifying provision to § 870.15(c) regarding the accrual of interest on late payments to provide that interest will accrue on any payment postmarked later than thirty days after the end of the calendar quarter in which the fee was owed. This provision responds to questions that have been raised as to whether the previous ambiguous regulations required that OSM must have been in actual receipt of the payment by the 30th day or whether the payment must have been postmarked by that time in order to avoid the interest charges. This change provides that either is sufficient. In addition, OSM has made some minor editorial changes to the final rule for the sake of clarity.

OSM received one comment supporting use of the postmark date to establish "timely" payment compliance.

E. Section 870.15(e)—Fee Compliance Actions

OSM added a new subsection (e) which details new more stringent enforcement and collection efforts OSM may take against responsible persons for failure to pay overdue reclamation fees, including interest on late payments or underpayments, failure to maintain adequate records, failure to file required reports or failure to provide access to records by an operator subject to requirements of SMCRA. These options include: Initiation of litigation; reporting to the Internal Revenue Service, State agencies responsible for taxation, and credit bureaus, and referrals to collection agencies. OSM has changed the proposed word "will" to "may" so that this section will authorize but not require OSM to undertake these actions. This change was made because in certain circumstances, such as failure to maintain records, a requirement to take one of the enumerated actions could be inappropriate. Under the provision as finally adopted, OSM may choose one or more of these specific alternatives to encourage compliance with the operator's statutory responsibilities under section 402 of SMCRA. OSM has also made some minor editorial changes to the final rule.

Moreover, OSM may take enforcement action based upon breach of a permit condition for nonpayment of reclamation fees where such a permit condition exists. This is reflected by the addition of a sentence that the prescribed remedies are not exclusive. Also, the payment of reclamation fees will be a condition of any new permanent program permit.

One commenter supported this new proposed section in spirit but recommended that OSM alter the language slightly to ensure that OSM undertakes some type of referral action to the state or federal taxation agency as well as initiating some form of enforcement action, i.e., either initiating litigation or referring the case to a collection agency. OSM has declined to make the suggested change. This option is already available to OSM under the proposed language. This language provides OSM sufficient flexibility to undertake any or all options required to encourage and enforce compliance with section 402 of the Act.

Another commenter argued OSM has no valid reason to add this new section other than as harassment of the operator. This commenter further stated these actions are clearly outside OSM's legal authority. OSM respectfully disagrees.

OSM added this new section to provide notification of the action or actions it may take to enforce requirements of section 402 of the Act when an operator fails to file production reports or pay reclamation fees. Such options are clearly within OSM's statutory authority granted under section 412 of SMCRA as well as under governmental-wide debt collection directives.

F. Final § 773.17(g)—Proposed § 870.15(f)—Permits Affected by Fee Debts

OSM had proposed to add a new § 870.15(f) requiring State regulatory authorities to suspend a permit for a specific mining operation if reclamation fees on the coal therefrom are due and owing the Federal Government for more than one month. That is, if the payment was delinquent on the last day of the month following the month in which the reclamation fee was due, the regulatory authority would have been required to initiate actions to suspend the permit for the mining operation in question. Similarly, if a mine report form for the last quarter of 1984, for example, covering production or non-production was not filed, suspension proceedings for that mining operation would also have been commenced.

Based on an analysis of comments received on the proposal, OSM has decided that a suspension outside of the normal enforcement context is not warranted in this situation. Instead, the final rule will allow such suspensions or other actions to occur only after providing all of the procedural safeguards associated with the issuance of a Notice of Violation or Cessation Order. This will be accomplished through amendment of 30 CFR 773.17 requiring continued payment of reclamation fees by the operator as a permit condition. Thus the permit will not be suspended automatically upon a failure to pay required fees. There will have to be a separate enforcement action taken based upon a violation of the permit condition.

The following is a summary of major comments and responses thereto:

A number of commenters questioned the source of the authority which would have allowed the States to suspend permits under the proposed rule for failure to pay reclamation fees. Several suggested that implementation of the proposed rule would require amendments to their State programs, and one State believed that fee collection was intended to be a part of the federal administrative procedure. In addition, several commenters were concerned that implementation of the proposed rule would impose an additional administrative and financial burden on the State Regulatory Authorities.

OSM agrees that proposed § 870.15(f) would have required States to develop new procedures to require the immediate suspension of mining. As adopted, the final rule will not require the adoption of new State procedures, but will require State program amendments to incorporate the new permit condition. OSM is not suggesting that States develop their own fee compliance mechanism. Instead OSM fee compliance officers (FCOs) and other personnel will notify States of violators and assist States in taking appropriate enforcement action. Moreover, OSM authorized personnel will be able to directly issue NOVs in oversight when necessary.

Several commenters had also questioned the adequacy of the proposal's "due process" protections. OSM shares the commenters' concerns and has required any actions aimed at suspending the permit to be taken in the standard enforcement context.

One commenter pointed out that suspension or revocation would be burdensome to a permittee who was not the "responsible party" under the proposed definition. The final rule responds to this concern by requiring payment by the operator. Because the condition applies only to coal produced under the permit, it is entirely appropriate that the permit be conditioned upon payment of fees associated with such coal, even in instances where the permittee and the operator are not the same person.

Two commenters suggested that the regulations allow for the negotiation of settlement agreements in lieu of suspension of permits. A number of commenters objected to suspension of permits for a single delinquency under the proposed rule, as opposed to a pattern of violations, and two of the commenters questioned how the proposed procedure would work in practice. The final rule provides the flexibility requested by the commenters. Satisfactory abatement action under an NOV is site-specific and could include an agreement to pay fees in a manner agreed to by OSM, including by installment agreements. Any breach of an agreement could lead to immediate action by OSM either under the original Notice of Violation or through new enforcement proceedings.

Finally, one commenter supported the new Section, in theory, but expressed concern that the proposed language was too vague since it failed to outline specific procedures for permit suspension by the States. This commenter also suggested that OSM adopt a national rule, incorporating section 521(a)(3) to ensure uniformity of enforcement.

This commenter's concerns are taken care of by using established enforcement procedures. OSM will rely on existing statutory and regulatory authority for enforcement of fee compliance, as a matter of direct Federal enforcement. OSM will make use of every means available under the Act to ensure that fees are paid on coal produced, including issuances of Notices of Violation and Cessation Orders.

where appropriate, pursuant to section 521 of SMCRA.

G. Section 870.15(f)—Proposed as § 870.15(g), Penalty on Fee Debts

In accordance with the Debt Collection Act of 1982 (Pub. L. 97-365), this new subsection imposes a six-percent per annum penalty on all fee debts owed under section 402 of SMCRA as soon as such debts are 91 days overdue. This penalty will be in addition to the interest which begins to accrue at the rate set by the U.S. Treasury, on the 31st day following the end of the calendar quarter for which the fee is due. OSM made some minor editorial changes to the final rule.

One commenter supported the revision in this section. This commenter remarked that an additional 6 percent interest rate, on top of the already existing interest rate required will have deterrent benefits. This commenter further stated such a charge, together with section 870.15(c), would make the interest penalty for being delinquent more in keeping with modern day economics.

A second commenter stated it should be clear that any penalty is on the principal and not on the accrued interest. This commenter also stated the Federal Claims Collection Act specifies a 6 percent or less penalty, and that no penalty is required. The commenter further recommended the penalty should start at one percent and then increase as long as the fee is due.

The Debt Collection Act of 1982, Pub. L. 97-365, section 11(e)(2)(B), requires the head of a Federal agency, or his designee, to "assess a penalty charge of no more than 6 per centum per annum, for failure to pay any portion of debt more than ninety days past due." OSM has elected to assess this penalty at the 6 percent maximum rate. As specifically stated in the Debt Collection Act, no interest will accrue on any assessed penalty.

A third commenter referred to the 6% penalty as an additional tax being imposed upon an operator who is delinquent in reclamation fee payments. This commenter called this action a legislative enactment by DOI exceeding the statutory powers given DOI by Congress. The commenter continued by stating that Congress has set the fee payment rate and method of establishing interest. The commenter advised no authority was granted for adding on any penalties. The commenter believed the proposed enactment to be unconstitutional.

The Debt Collection Act of 1982 was enacted by Congress "to increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts owed the United States." This Act provides clear legal authority for DOI to implement these provisions.

A fourth commenter advised that the requirement of a 6% penalty is costly to the small operator. This commenter further stated that penalties should cease on the date a payment plan is initiated, and only come back into existence if the payment plan is defaulted.

The Debt Collection Act of 1982 mandates a penalty of 6% or less on debts owed the Federal Government. OSM has elected to impose this penalty at the maximum rate after the fee is 91 days overdue. If an installment agreement is negotiated prior to the ninety-first day, no penalty will be imposed. A penalty will be imposed if the installment agreement is defaulted.

H. Section 870.15(g)—Proposed as § 870.15(h) Processing and Handling Charges

The new § 870.15(g) assesses charges to cover the cost of processing and handling delinquent claims. The processing includes referrals to the Solicitor's Office, Department of the Interior, as well as private collection agencies. The debtor is to be notified in the first demand letter (bill) of the potential penalty and processing charge that will be incurred if the debt remains unpaid.

The amount of the processing charge is approximately what OSM must spend to collect overdue fees. The amount of the processing charge will be based upon the following components: (1) For fee debts referred to a collecton agency, the amount the collection agency charges; (2) For debts OSM processes and handles without using a collection agency, an amount equivalent to that charged by collection agencies for the same or similar services; and (3) For debts referred to the Solicitor, Department of the Interior, to bring suit for collection of the fee, one or two additional fixed components. The first component will be based on the then current estimated cost to prepare a debt case for litigation and will reflect expenses incurred by OSM, the Solicitor and any other person (such as a collection agency or asset location company responsible for the preparation of appropriate documentation regarding its collection on behalf of OSM). Should a debt subsequently proceed to litigation, the second additional component will be based on the estimated cost of litigating each of these debt cases, which includes the cost for preparing a debt case for litigation. Under § 870.15(g)(1)(v), all of OSM's other administrative collection costs may be provided for. Particular administrative expenses are not limited to the examples cited in the final rule. The final rule also specifies under § 870.15(g)(2) that no prejudgment interest accures on any processing and handling charges. The word "prejudgment" was added so as not to preclude collection of post-judgment interest on the total amount owed, including processing and handling charges. OSM also made some minor editorial changes in the final rule.

All penalties and processing and handling charges imposed and collected on fee debts will go into the Secretary's share of the Abandoned Mine Reclamation Fund to reimburse OSM for the cost of collecting fees owed.

One commenter supporting this new section believes it to be a fair practice used in many other collection arenas. This commenter suggested such charges might also act as a deterrent against future delinquency.

One commenter recommended specific amounts should be charged and not any amounts that would be burdensome to a small operator and arbitrary on the part of OSM.

Another commenter remarked that the proposed rule seems improper especially where minor debts are involved. This commenter further stated these matters can and should be addressed on a case-by-case basis rather than categorically penalizing operators for nonpayment.

A fourth commenter stated it is the responsibility of Congress and not the Department of the Interior to enact taxes. This commenter advised economic times are hard and operators have gone through recessions. This commenter remarked that OSM is attempting to double the amount owed by the small operator because he failed to pay on time. The commenter also observed the 6% penalty and the processing charges could cause the operator to owe the Government more, with these charges and the interest, than the original delinquent tax.

The Debt Collection Act of 1982, Pub. L. 97-365 provides OSM with the authority to assess penalties and to charge for processing and handling debt collection cases. The processing and handling charges are not arbitrary. The amounts charged will be based on actual and estimated costs to provide this service and will differ depending upon the type of case involved. All debtors will be assessed a charge for the service required to process and handle their delinquent account regardless of the size of their operation. Standard charges are appropriate for certain components where the costs of particular services will not vary by size of operation.

One commenter stated the Solicitor's Office and staff is funded for processing and handling delinquent claims. This commenter further remarked that if OSM assesses charges to process and handle delinquent claims, line budget items, including personnel, and all expenses relating to prosecuting the operator and collecting debts should be eliminated.

The administrative costs for OSM's Abandoned Mine Reclamation Program, including the fee compliance program come from the Secretary's share of the Abandoned Mine Reclamation Fund. All penalties, processing and handling charges imposed and collected on fee debts will go into the Secretary's share of the fund. Once this new system is in place, the costs necessary to administer OSM's program to recover delinquent reclamation fees will be borne by the debtor. Over a period of time, OSM may be able to significantly reduce some line items currently budgeted for this purpose.

I. Section 870.16(a)—Access to Mines, Preparation Plants, Support Facilities and Loading Facilities

OSM clarified § 870.16(a) to put all surface mining operators and any persons engaging in or conducting a surface coal mining operation on notice that they will be required to keep existing records of coal produced, used, bought or sold. The previous rule implied but did not specifically require these persons to keep existing records of purchased coal. This is in addition to the current authority of FCO's under § 870.17(a) to examine records of the second party involved in the sale or transfer of ownership of coal by the operator. By clarifying recordkeeping requirements for all mining operations subject to the jurisdiction of SMCRA in conjunction with access to records of transferee or purchasing coal brokers and transport facilities, OSM will be able to check production data and thereby hopefully lessen the underreporting or nonreporting of production data. OSM has determined that the proposed reference to section 701(28) of the Act is unnecessary and will not adopt it as part of the final rule. However, that provision and section 528 both are relevant to whether an operation is subject to SMCRA jurisdiction.

One commenter supported revisions to this section. This commenter said that the earlier definition of "operator" failed to adequately include support facility operators. The commenter further stated that the extension of the definition will aid the Fee Compliance Officer in efforts to uncover fee fraud. The commenter recommended that OSM should also require operators to maintain, on the mine site, copies of the AML fee report filed with OSM.

OSM has reviewed this comment and because this recommendation was not included in the initial proposed rule, OSM has decided to postpone consideration.

Another commenter felt this is another attempt by OSM to get into recordkeeping. This commenter stated OSM has the right to inspect records and there is no reason to further pursue this issue. The intent of this clarifying revision is to notify all operators under the jurisdiction of SMCRA, including operators of support facilities, that they are required to keep records of coal produced, used, bought or sold.

J. Section 870.16(a)(4)—Certification of Btu Value

Section 870.16(a)(4) is revised slightly by adding the requirement that an independent laboratory certify the Btu value of a ton of in situ coal at least semi-annually. This frequent requirement makes it possibe to monitor any changes in the coal seam. OSM received no comments on this Section. It is adopted without change.

K. Section 870.16(b)—Access to Mines, Preparation Plants, Support Facilities and Loading Facilities

OSM revises § 870.16(b) to clarify that OSM Fee Compliance Officers have the authority to review records of all surface mining operations, including preparation plants and support facilities resulting from or incident to a mine or other regulated activity. Authority for such actions is derived from sections 412(a) and 701(28) of SMCRA.

The purpose of this revision is to provide OSM's fee compliance officers (FCOs) with the means to determine the extent to which operations covered by the Act are discharging their statutory responsibilities to report production figures accurately and pay reclamation fees due on all production for each calendar quarter. The previous regulations did not provide a means of effectively monitoring all mining operations to ensure compliance with the statutory requirements for reporting production figures accurately and paying full reclamation fees on production for each quarter. Both the criminal penalty provision in subsection 402(d) of the Act, 30 USC 1232(d), and the provision in subsection 402(e) allowing recovery of reclamation fees through a civil debt collection action, will become operative only after OSM has determined which operators of mines or tipples have underreported production or underpaid fees.

OSM will be better able to identify those operators who misreport coal production figures if FCO's are granted access to information on sales of coal made by operators to tipple owners. OSM can, in many situations, make better use of its auditing personnel if auditors concentrate on tipples and plants through which coal from several operators moves. Such audits are especially helpful in checking for "wildcatters" and those producers who underreport tonnage of production in order to avoid reclamation fee liability.

One commenter suggested that OSM has failed to prove that access to records is a problem, and that regulations should be promulgated only on the basis of demonstrated need. OSM disagrees. OSM's purpose in proposing this section is to notify operators of all surface coal mining operations, including preparation plants and tipples located at or near a mine site, of the authority of OSM FCOs to examine books and records.

Another commenter proposed that OSM extend to Federal and State inspectors the authority to review production records to verify if an operator has filed an AML fee report. This commenter also suggested that OSM *require* inspectors to give written notice to FCO's of any discrepancies in the AML report. OSM does not support this position for two reasons. First, providing State inspectors such additional authority is inappropriate because collection of AML fees is not a State program function and, second, State inspectors do not function as OSM agents. It is unnecessary to broaden Federal inspectors' responsibilities in every case or to provide a notice requirement because FCO's and inspectors currently work together and share information. Inspectors are put on notice where an operator reports zero production and the FCO has information to the contrary. However, additions were made to the final rule to allow access to records by FCOs and "other authorized representatives," including inspectors where appropriate. OSM has also made some minor editorial changes to the final rule.

L. Section 870.16(c)—Substantiating Records

Revised § 870.16(c) requires all surface coal mining operations subject to the provisions of SMCRA to make their production and sales records available to OSM's Fee Compliance Officers. OSM amended the final rule to clarify that this section applies to "any person engaging in or conducting a surface coal mining operation," and not just "operators" as originally proposed.

One commenter remarked that an operator takes a substantial number of days to attempt to assemble all the records and information requested when contacted by OSM. This commenter further advised that OSM does not limit requests to books and records necessary to substantiate the accuracy of reclamation fee reports.

The commenter stated that it is beyond all comprehension to allow the investigating person to take the books and copy them somewhere. The commenter suggested that to make this process fair and to avoid abuse by employees of OSM, the operator should be able to charge OSM for the reasonable cost of collecting the necessary requested records and making them available to OSM. The commenter reasoned this would make them more responsive to each particular situation.

Another commenter urged OSM to use flexibility in the application of this Section.

Except for a change in scope, to include records of support facilities, recordkeeping requirements in § 870.16 are the same as those contained in the rules which have been in effect since October 25, 1978. Revisions to this section were made to notify all persons engaging in or conducting surface coal mining operations subject to the provisions of SMCRA of the change in scope of these requirements. OSM audits of these books and records are essential to ensure compliance with section 402 of SMCRA. Prior to an audit, OSM policy requires FCOs to notify operators of records that must be available for audit. Records required for OSM's review may vary depending on the basis of the operator's reporting or accounting system.

OSM received a comment concerning the following sentence: "If the fee is paid at the maximum rate, the FCO's shall not copy information relative to price." The commenter stated that the sentence was confusing and was not explained in the preamble. This sentence was not one of the proposed changes. It is part of the final rules which have been in effect since regulations were first published on this subject on December 13, 1977, 42 FR 62713.

These rules were more fully explained in the preamble to the earlier regulation. OSM made clear that the right to copy price information is limited to and needed only for those cases where the fee is based on a percentage of value. If the flat cents-per-ton fee is paid, price information is not relevant.

M. Section 870.16(d)—Record Maintenance

OSM revises § 870.16(d) to clearly state that all persons engaging in or conducting surface coal mining operations must maintain their production and sales records for at least six years from the date the fees were due or paid. In addition, this section limited the time span for OSM audits to six years assuming that production was reported accurately and fees paid accordingly. The previous rule was ambiguous since it referred to the term "operator" and it did not have a time limit for OSM audits. The six-year period for record maintenance is not to be construed as a statute of limitations for the commencement of an action for recovery of delinquent reclamation fees pursuant to section 402 of the Act, 30 U.S.C. 1232. Absent Government consent through Congressional action, no period of limitations exists. See, *Guaranty Trust Co.* v. *United States,* 304 U.S. 126, 132 (1938).

One commenter remarked that a period of six years from the date the fees were paid is either cumbersome and/or a costly burden on small operators who do not have the financial resources, or the staff available, to maintain such records for a period of six years. This commenter suggested one year would be more appropriate and less costly.

A second commenter stated operators who have underreported reclamation fees for years, and have not been either audited or detected by OSM, will be able to destroy all evidence of fraud if they are allowed to destroy records after six years. This commenter recommended that OSM should require operators to maintain books for the remaining life of the AML fund (1992), to ensure the possibility of proving any fraud detected in the future.

OSM has given consideration to these comments and determined the one year record retention period suggested by the first commenter to be inadequate. OSM believes the second commenter's recommendations to extend the recordkeeping requirement to a fifteen year period, the entire life of the fund, would be a burdensome requirement for some surface coal mine operators. OSM will neither shorten nor lengthen the six year record retention requirements in effect since December 13, 1977. The preamble to regulations published on that date discusses this requirement.

Consideration of the second commenter's recommendations has led to OSM's decision to delete the proposed six year audit limitation. OSM's Fee Compliance Officers will audit all existing records containing information required to be kept by § 870.16(a)(1)(4). In some cases the time period audited will extend beyond a six year period.

Also, OSM amended the final rule to clarify that this section applies to "any person engaging in or conducting a surface coal mining operation," and not just "operators" as originally proposed.

N. Section 870.16(e)—Estimated Fee

This new subsection provides a method of assessing reclamation fees in cases where operators fail to maintain adequate records or fail to make such records available for audit purposes. Previously, OSM had no satisfactory method of determining fee liability whenever an operator failed to keep adequate records or refused access to such records. OSM's only recourse was civil litigation.

This rule will implement a fair method of establishing a fee debt that will be incurred immediately. In the absence of records, OSM will estimate the amount of fees owed on coal produced. In formulating this amount, OSM will base a preliminary estimate on such factors as mining method used, type of coal produced, and geographical location. This preliminary figure will then be increased by 20% to bring the estimate within the range of probable fees owed. This method of determining reclamation fee liability is a variation of the assessment procedure used by Kentucky when the State must estimate natural resource tax liability. Kentucky uses any information in its possession to arrive at a preliminary estimate and then assesses the tax at no more than twice the amount estimated to be due. Rather than double the amount of the estimate, as done by Kentucky, OSM will add 20% to provide a reasonable margin of error. This estimate will be treated as the amount owed, and interest will accrue and other charges will be made in the event of non-payment.

Three commenters raised objections to adoption of this section. One commenter questioned OSM's method for estimating fee liability, claiming that an estimate based on average production, mining method, type of coal or geographical location would be purely arbitrary and unfounded. It was suggested that factors such as weather and market forces also be considered. These will be considered in analyzing the "nature of the operation"; OSM will make use of any and all information available to estimate amount of fee liability where an operator fails to maintain adequate records or refuses access to records for audit purposes. This commenter also believes that the operator assessed should be free to prove that an estimate is inaccurate. OSM agrees. An operator may provide information to challenge the amount of OSM's estimated fee, and OSM has amended its regulation accordingly. These commenters also felt that an additional 20% upward adjustment of the estimated fee would be inequitable. One commenter felt that the 20% adjustment was not adequately explained in the proposed rule, and one said that if OSM is formulating the estimate, a 20% downward adjustment would be a more accurate reflection. OSM believes that 20% upward adjustment will tend to ensure that tonnage produced is not underestimated, encourage operators to provide information and enhance the possibility of collecting all fees owed. The final rule clearly states that OSM will use this estimating technique only in the event that an operator has no adequate records or refuses access to records for audit purposes.

OSM received one comment in support of the rule. This commenter also urged OSM to emphasize that this new section does not preclude OSM or the regulatory authority from issuing a civil penalty citation for violating the requirements of this section. Under the rules adopted today OSM will take whatever enforcement actions are appropriate. OSM will treat the estimated fee as the amount of fee owed. When this estimated fee becomes overdue it is subject to all interest, penalty, processing and handling charges, and enforcement actions in Part 870 or in SMCRA or its other implementing regulations.

III. Procedural Matters

A. Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a Regulatory Flexibility analysis under Public Law 96-354. The reasons underlying these determinations are as follows:

The revisions to Part 870 of the Abandoned Mine Reclamation Fund regulations will not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets; nor will they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There will be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

B. National Environmental Policy Act

OSM has been granted a categorical exclusion from the procedures of the National Environmental Policy Act for the subject of reclamation fees imposed by Pub. L. 95-87 (46 FR 7487, January 23, 1981).

C. Paperwork Reduction Act of 1980

The information collection requirements contained in 30 CFR 870.15(c), and 870.16 (a) and (d) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0063.

List of Subjects

30 CFR Part 773

Administrative practice and procedure, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 870

Coal mining, Reporting requirements, Surface mining, Underground mining

Based on the foregoing, 30 CFR Parts 773 and 870 are amended as set forth herein.

Dated: June 17, 1984.

Garrey Carruthers,

Assistant Secretary, Land and Minerals Management.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. Section 773.17 is amended by adding paragraph (g) as follows:

§ 773.17 Permit conditions.

* * * * *

(g) The operator shall pay all reclamation fees required by Subchapter R of this chapter for coal produced under the permit for sale, transfer or use, in the manner required by that subchapter.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

2. Section 870.15 is amended by revising paragraph (c) and adding paragraphs (e), (f), and (g) to read as follows:

§ 870.15 Reclamation fee payment.

* * * * *

(c) As of April 1, 1983, delinquent reclamation fee payments are subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Fiscal Requirements Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the Notices section of the **Federal Register.** Interest on unpaid reclamation fees shall begin to accure on the 31st day following the end of the calendar quarter for which the fee payment is owed and will run until the date of payment. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All operators who receive a Coal Production and Reclamation Fee Report (Form OSM-1), including those with zero production, must submit a completed Form OSM-1, as well as any fee payment due. Fee payments postmarked later than thirty days after the calendar quarter for which the fee was owed will be subject to interest.

* * * * *

(e) Failure to pay overdue reclamation fees, including interest on late payments or underpayments, failure to maintain adequate records, or failure to provide access to records of a surface coal mining operation may result in one or more of the following actions: (1) Initiation of litigation; (2) reporting to the Internal Revenue Service; (3) reporting to State agencies responsible for taxation; (4) reporting to credit bureaus; or (5) referral to collection agencies. Such remedies are not exclusive.

(f) When a reclamation fee debt is greater than 91 days overdue, a 6 percent per annum penalty shall begin to accure on the amount owed for fees and will run until the date of payment. This penalty is in addition to the interest described in paragraph (c) of this section.

(g)(1) For all delinquent fees, interest and any penalties, the debtor will be required to pay a processing and handling charge which shall be based upon the following components:

(i) For debts referred to a collection agency, the amount charged to OSM by the collection agency;

(ii) For debts processed and handled by OSM, a standard amount set annually by OSM based upon similar charges by collection agencies for debt collection;

(iii) For debts referred to the Solicitor, Department of the Interior, but paid prior to litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(iv) For debts referred to the Solicitor, Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(v) If not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(2) No prejudgment interest accrues on any processing and handling charges.

3. Section 870.16 is amended by revising paragraphs (a), (b), (c), and (d) and adding paragraph (e) to read as follows:

§ 870.16 Production records.

(a) Any person engaging in or conducting a surface coal mining operation shall maintain, on a current basis, records that contain at least the following information:

(1) Tons of coal produced, bought, sold or transferred, amount received per ton, name of person to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator and date of consumption.

(3) Tons of coal stockpiled or inventoried which are not classified as sold for fee computation purposes under § 870.12.

(4) For in situ coal mining operations, total BTU value of gas produced, the BTU value of a ton of coal in place certified at least semiannually by an independent laboratory, and the amount received for gas sold, transferred, or used.

(b) OSM fee compliance officers and other authorized representatives shall have access to records of any surface coal mining operation for the purpose of determining compliance of that or any other such operation with this part.

(c) Any person engaging in or conducting a surface coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by OSM fee compliance officers. If the fee is paid at the maximum rate, the fee compliance officers shall not copy information relative to price. All copied information shall be protected to the extent authorized or required by the Privacy Act and the Freedom of Information Act (5 U.S.C. 552 (a), (b)).

(d) Any persons engaging in or conducting a surface coal mining operation shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) (1) If an operator of a surface coal mining operation fails to maintain or make available the records as required in this section, OSM shall make an estimate of fee liability under this part through use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due, plus a 20 percent upward adjustment for possible error.

(2) Following an OSM estimate of fee liability, an operator may request OSM to revise the estimate based upon information provided by the operator. The operator has the burden of demonstrating that the estimate is incorrect by providing documentation acceptable to OSM, and comparable to information required in § 870.16(a).

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*; Pub. L. 97–365, 5 U.S.C. 5514 *et seq.*).

[FR Doc. 84–17808 Filed 7–3–84; 8:45 am]
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30 CFR Part 901

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

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Alabama permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In addition, certain conditions of approval imposed by the Secretary of the Interior on Alabama are being modified and removed.

On November 28, 1983, the Alabama Surface Mining Commission (ASMC) transmitted to OSM a set of regulatory amendments intended, in part, to meet its three remaining conditions. The conditions of approval relate to specific program requirements in the areas of sediment control and spoil placement and disposal. The specific conditions being addressed by the State in this rulemaking are discussed in detail below under "SUPPLEMENTARY INFORMATION".

Alabama's November 28, 1983 submittal also addressed the three provisions of the State's program remanded by the United States District Court for the Middle District of Alabama in *Citizens for Responsible Resource Development v. Watt*. In addition, Alabama included other program amendments that are unrelated to the conditions of approval. Additional information about these matters can be found below under "SUPPLEMENTARY INFORMATION".

OSM published a notice in the Federal Register on January 12, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (49 FR 1532). The public comment period ended February 13, 1984. A review of Alabama's proposed amendments by OSM identified several concerns relating to inspection of impoundments and placement of excess spoil. OSM notified the ASMC about it concerns and on May 3, 1984, ASMC responded by submitting modifications to its proposed amendments. OSM reopened the comment period from May 22 to June 6, 1984, in order to provide the public on opportunity to reconsider the adequacy of the proposed amendments.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Secretary has determined that the amendments to Alabama's program, as modified on May 3, 1984, satisfy the remaining conditions of approval, and that the amendments meet the requirements of SMCRA and the Federal permanent program regulation. Accordingly, the Secretary is removing the conditions and approving the program modifications found to be in accordance with SMCRA and no less effective than the Federal rules.

The Federal rules codifying Secretarial decisions concerning the Alabama permanent program are being amended to reflect these actions.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Director, Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, Room 302, Birmingham, Alabama 34209; Telephone: (202) 254–0890.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Information regarding the general background on the Alabama program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020–22038 (May 20, 1982) and 48 FR 34026 (July 1983).

At the time of the Secretary's conditional approval, Alabama agreed to meet 13 conditions—(a), (b)(1)–(2), (c), (d)(1)–(5), (e)(1)–(4), (f)(1)–(2), (g)(1)–(3), (h)(1)–(2), (i), (j), (k), (l), and (m)(1)–(6).

On March 2, 1984, OSM announced that conditions (a)–(c), (f)–(1), (m)(1)–(4), and (m)(6) had been removed (49 FR 7797).

OSM announced in the November 15, 1983 **Federal Register** (48 FR 51941) a proposed rule concerning the remand of three Alabama program provisions by the United States District Court for the Middle District of Alabama in *Citizens for Responsible Development v. Watt,* Civil No. 82–530–N, October 7, 1983. Two of the three remanded provisions were proposed for reconsideration by OSM's November 15, 1983 notice in light of recent changes made to the Federal rules.

The first remanded provision concerns the Secretary's approval of Alabama's provision allowing partial bond release prior to topsoil replacement. Under the Federal rules which existed at the time the Alabama program was conditionally approved, 30 CFR 807.12 allowed the regulatory authority discretion to release sixty percent of the bond upon completion of Phase I reclamation. The Federal rules at 30 CFR 807.12(e)(1) required topsoil replacement as one of the elements which must be finished in order for reclamation Phase I to be deemed to have been completed. Alabama's provision at 880–X–9D omits this requirement. However, the Federal rules have since been changed. The new rule at 30 CFR 800.40(c)(1) provides that Phase I reclamation which would allow partial bond release *may* include topsoil replacement, but the requirement of topsoil replacement is no longer mandatory (48 FR 32932, July 19, 1983).

The other remanded provision concerns the Secretary's approval of Alabama's rules governing bond replacement in the event of the insolvency of a surety or bank. Under the Federal rules that existed at the time the Alabama program was conditionally approved, 30 CFR 806.12(e)(6)(iii) and (g)(7)(iii) provided that during the period an operator is without bond coverage and is seeking a replacement bond, the regulatory authority shall conduct weekly inspections of the affected site(s). The Alabama counterparts at 880–X–9C–.03(5)(e)(3) and (6)(h)6(iii) omit this requirement. Subsequent to the Secretary's conditional approval of Alabama's program, the Federal rules concerning bond replacement were changed to no longer require weekly inspections. *See* 30 CFR 800.16(e)(2), 48 FR 32932, July 19, 1983.

In order to respond to the District Court's remand of these two Alabama provisions, OSM sought public comment on whether the existing Alabama provisions are in accordance with SMCRA and are now no less effective than the current Federal rules. The public comment period ended on December 15, 1983. The Secretary's findings and decision are being announced in this **Federal Register** notice.

In addition to addressing the two remanded provisions discussed above, OSM's November 15, 1983 notice also proposed placing an additional condition on Alabama's program in response to the District Court's remand of a third program provision. However, such action is being superseded because Alabama submitted a proposed amendment to address the third remanded section. All three remanded provisions are discussed in detail below under Section D. Findings on the Alabama Provisions Remanded in *Citizens for Responsible Resource Development v. Watt.*

II. Discussion of the Proposed Amendments

On November 28, 1983, the Alabama Surface Mining Commission (ASMC) submitted a set of regulatory amendments intended to satisfy conditions (d), (e) and (m)(5) and to address one of the provisions of the State program remanded by the United States District Court for the Middle District of Alabama.

Briefly, the conditions are:

1. Condition (d)(1) requires Alabama to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds.
2. Condition (d)(2) requires Alabama to provide for sufficient sedimentation pond design criteria in accordance with 30 CFR 816.46(e)–(u) and 817.46(e)–(u).
3. Condition (d)(3) requires Alabama to limit impoundment slopes to not greater than 1v:2h.
4. Condition (d)(4) requires Alabama to provide for the inspection of all appropriate dams in accordance wtih 30 CFR 77.216–3.
5. Condition (d)(5) requires to provide for minimum sediment storage volume for sedimentation ponds.
6. Condition (e)(1) requires Alabama to prohibit the disposal of coal processing waste in head-of-hollow and valley fills.
7. Condition (e)(2) requires Alabama to provide for the placement of spoil in four foot horizontal lifts unless otherwise authorized by the regulatory authority.
8. Condition (e)(3) requires Alabama to provide criteria for slopes greater than 36%.
9. Condition (e)(4) requires Alabama to provide criteria and requirements for head-of-hollow and valley fills in a manner no less effective than 30 CFR 816.72 and 816.73.
10. Condition (m)(5) requires Alabama to make certain editorial changes to its rules to add appropriate references in §§ 816.46(u) and 817.46(u) (now redesignated as 880–X–10G and 880–X–10D).

Specifically, Alabama:

(1) Proposed changes to rules 880–X–10C–.13 and 10D–.13 to meet condition (d)(1);

(2) Proposed changes to rules 880–X–10C–.17 and 10D–.17 to meet conditions (d)(2) and (d)(5);

(3) Proposed changes to rules 880–X–10C–.20 and 10D–.20 to meet conditions (d)(3) and (d)(4);

(4) Proposed changes to rules 880–X–10C–.36(13)(b) and 10D–.33(13)(b) to meet condition (e)(1);

(5) Proposed changes to rules 880–X–10C–.36(3) and 10D–.33(3) to meet condition (e)(2);

(6) Proposed changes to rules 880–X–10C–.36(9) and 10D–.33(9) to meet condition (e)(3);

(7) Proposed changes to rules 880–X–10C–.36(15)–(17) and 10D–.33(15)–(17) to meet condition (e)(4);

(8) Requested that OSM review condition (m)(5) in light of final OSM rules at 30 CFR 816.46 and 817.46 published September 26, 1983 (48 FR 44032); and

(9) Submitted a draft memorandum of understanding between the Alabama Department of Environmental Management and the Alabama Surface Mining Commission which would, when finalized, provide for necessary consultation and approval authority on variances from approximate original contour for steep slope mining in accordance with 30 CFR 785.16(c)(4)(iii) and the decision of the U.S. District Court for the Middle District of Alabama in *Citizens for Responsible Resource Development v. Watt,* Civil No. 82–530–N, October 7, 1983.

On January 12, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendments and inviting public comment on whether the proposed modifications addressed the respective conditions and whether the proposed amendments were in accordance with SMCRA and no less effective than the Federal rules (49 FR 1532). The public comment period ended February 13, 1984. A public hearing scheduled for February 6, 1984, was not held because no one expressed a desire to present testimony.

During this period, a review of Alabama's proposed amendments by OSM identified several concerns relating to inspection of impoundments and placement of excess spoil. OSM notified the ASMC about its concerns, and on May 3, 1984, the ASMC responded by submitting additional modifications to the proposed amendments.

On May 22, 1984, OSM published a notice in the **Federal Register** reopening and extending the public comment period on Alabama's proposed amendments as modified on May 3, 1984 (49 FR 21549). That comment period ended on June 6, 1984.

On February 17, 1984, the Administrator of the Environmental Protection Agency gave written concurrence on the November 28, 1983, amendments to the Alabama program.

III. Secretary's Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Alabama on November 28, 1983, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

A. Findings on Conditions

1. Condition (d)(1)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not provide that, at the present time, the best technology currently available for sediment control is sedimentation ponds (Finding 13.7, 47 FR 22030). Rather, the Alabama rules required that all surface drainage from the disturbed area be passed through sedimentation ponds *or a treatment facility* before leaving the permit area. The Federal rules at 30 CFR 816.46 and 817.46 have since been revised to require that all surface drainage from the disturbed area shall be passed through a siltation structure, which is defined as a sedimentation pond, a series of sedimentation ponds, or other treatment facility (48 FR 44032, September 26, 1983). The Secretary finds that Alabama has amended its rules at 880–X–10C–.13 and 880–X–10D–.13 to require that all drainage be passed through a sedimentation pond, a series of sedimentation ponds or other treatment facility. Under the rule, other treatment facilities are defined to mean any chemical treatment system utilized to prevent additional contributions of suspended solids to streamflow. The Secretary finds that the Alabama rules are now no less effective than 30 CFR 816.46 and 817.46.

2. Condition (d)(2)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not provide for sufficient sedimentation pond design criteria in accordance with 30 CFR 816.46(e)–(u) and 817.46(e)–(u) (Findings 13.8 and 13.18, 47 FR 22030). The Secretary amended condition (d)(2) on March 2, 1984, to no longer require Alabama to meet the provisions of superseded Federal rules 30 CFR 816.46(p) and 817.46(p). These Federal requirements, which specified compaction standards for fill material for sedimentation ponds, were removed when the amended Federal rules at 30 CFR 816.46 and 817.46 were promulgated on September 26, 1983 (48 FR 44032). The Secretary now finds that Alabama has amended its rules at 880–X–10C–.17 and 880–X–10D–.17 to include sedimentation pond design criteria that are no less effective than 30 CFR 816.46 and 817.46.

3. Condition (d)(3)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not prohibit permanent impoundment perimeter slopes greater than 1v:2h (Finding 13.9, 47 FR 22030). The Federal rules at 30 CFR 816.49 and 817.19 were amended on September 26, 1983 (48 FR 43994) and no longer include a slope limitation of 1v:2h. The Secretary now finds that Alabama has amended its rules at 880–X–10C–.20 and 880–X–10D–.20 to be no less effective than revised 30 CFR 816.49 and 817.49.

4. Condition (d)(4)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not provide for the inspection of dams in accordance with 30 CFR 77.216–3, for all resulting reports to be kept at the minesite, and for all certifications, reports and statements required by the Mine Safety and Health Administration to be filed with the regulatory authority (Finding 13.10, 47 FR 22030). The Secretary now finds that Alabama has amended its rules 880–X–10C–.20 and 880–X–10D–.20 to include these requirements and to be no less effective than 30 CFR 816.49 and 817.49, as promulgated on September 26, 1983 (48 FR 43994).

5. Condition (d)(5)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not provide for a minimum sediment storage volume for sedimentation ponds (Finding 13.16, 47 FR 22030). The Secretary now finds that Alabama has amended its rules 880–X–10C–.17 and 880–X–10D–.17 to require that sedimentation ponds be designed and constructed to provide adequate sediment storage volume, which is no less effective than 30 CFR 816.46 and 817.46.

6. Condition (e)(1)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not prohibit disposal of coal processing waste in head-of-hollow and valley fills (Finding 13.12, 47 FR 22030). The revised Federal rules at 30 CFR 816.71(i), 817.71(i), 816.72 and 817.72 (48 FR 32910, July 19, 1983) allow disposal of coal processing waste in head-of-hollow and valley fills. The Secretary now finds that Alabama has amended its rules 880–X–10C–.36(13)(b) and 880–X–10D–.33(13)(b) to be no less effective than the revised Federal requirements as promulgated July 19, 1983.

7. Condition (e)(2)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not provide for horizontal lift of spoil (Finding 13.13, 47 FR 22030). The Secretary now finds that Alabama has amended its rules 880–X–10C–.36(3) and 880–X–10D–.33(3) to require that spoil be placed in horizontal lifts not exceeding 4 feet in thickness and are now no less effective than 30 CFR 816.71(e)(2) and 817.71(e)(2).

8. Condition (e)(3)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not contain criteria for slopes greater than 36 percent in spoil disposal areas (Finding 13.14, 47 Fr 22030). The Secretary now finds that Alabama has amended its rules 880–X–10C–.36(9) and 880–X–10D–.33(9) to specify that key way cuts or rock toe buttresses shall be constructed when the slope in the disposal area exceeds 1v:2.8h (36 percent) or such lesser slope as the regulatory authority may designate. The Secretary finds that the amended Alabama rules are no less effective than 30 CFR 816.71(d)(2) and 817.71(d)(2).

9. Condition (e)(4)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, did not contain adequate criteria with regard to specific requirements for head-of-hollow and valley fills, as did 30 CFR 816.72–.73 and 817.72–.73 (Findings 13.15, 14.5 and 14.9, 47 FR 22030). The Secretary now finds that Alabama has adopted rules 880–X–10C–.36(16) and 880–X–10D–.33(16) to provide criteria for head-of-hollow and valley fills no less effective than 30 CFR 816.72 and 817.72.

10. Condition (m)(5)

The Secretary found that the Alabama program conditionally approved on May 20, 1982, omitted two important cross-references from its rules 816.46(u) and 817.46(u). The Federal regulations at 30 CFR 816.46 and 817.46 have since been amended to delete subsection (u) (48 FR 44032, September 26, 1983). In light of the Federal revisions, the Secretary has reconsidered the condition and determined that it is no longer appropriate.

B. Amendments Unrelated to Conditions of Approval

1. Alabama has amended rule 880–X–8C–.06 concerning applications for approval or disapproval for exploration of more than 250 tons. The rule has been amended to add a provision that the applicant must submit a performance bond and certificate of liability insurance in accordance with rule 880–X–9, except that there shall be no minimum bond amount, the period of liability shall be two full growing seasons,and only the requirements of paragraphs (1), (1)(a), (4) and 6)(a)–(d) of rule 880–X–9D–.02 apply. The Federal regulations at 30 CFR Part 772 (48 FR 40622, September 8, 1983) do not require a performance bond or liability insurance for coal exploration operations. The Secretary therefore finds that amended Alabama rule 880–X–8C–.06 is no less effective than the Federal regulations.

2. Alabama has amended rules 880–X–10C–.36 and 880–X–10D–.33 concerning disposal of excess spoil and underground development waste. The amendments were intended to make Alabama's rules consistent with the revised Federal rules on excess spoil disposal at 30 CFR 816.71–817.74 and 817.71–817.74 (48 FR 32910, July 19, 1983).

During the review of Alabama's proposed amendments, OSM identified three concerns:

a. Alabama rules 880–X–10C.36(13(b) and 880–X–10D.33(13(b) did not require the approval of the regulatory authority for disposal of coal processing waste in excess spoil fills, as do 30 CFR 816.71(h)(4) and 817.71(h)(4).

b. Alabama rules 880–X–10C–.36(15)(b) and 880–X–10D–.33(15)(b) did not specify that approval by the regulatory authority is discretionary for gravity transport of excess spoil. The Federal rules specify such a requirement at 30 CFR 816.74(e) and 817.74(e)

c. Alabama rules 880–X–10C–.36(15)(b) and 880–X–10D–.33(15)(b) did not require that gravity transport courses be determined as part of the permit application nor did they require rehandling of any preexisting spoil that is disturbed. Such requirements are specified in 30 CFR 816.74(e) and 817.74(e).

On May 3, 1984, Alabama submitted modifications to its November 28, 1983 proposed amendments which addressed OSM's concerns through changes to rules 880–X–10C–.36(13)(b) and 10D–.33(13)(b); and 880–X–10C–.36(15)(b) and 10D–.33(15)(b). The Secretary finds that the amendments, as modified on May 3, 1984, are no less effective than 30 CFR 816.71–816.74 and 817.71–817.74.

3. Alabama has amended rules 880–X–10C–.13 and 880–X–10D–.13 concerning water quality standards and effluent limitations to be consistent with the revised Federal rules at 30 CFR 816.42 and 817.42 (48 FR 44032, September 26, 1983). The Secretary finds the Alabama rules to be no less effective than 30 CFR 816.42 and 817.42.

4. Alabama has amended rules 880–X–10C–.17 and 880–X–10D–.17 concerning sedimentation ponds to be consistent with the revised Federal rules at 30 CFR 816.46 and 817.46 (48 FR 44032, September 26, 1983). The Secretary finds that the Alabama rules are no less effective than the Federal regulations on siltation structures, including the requirements for design, construction and removal.

5. Alabama has amended rules 880–X–10C–.20 and 880–X–10D–.20 concerning impoundments to be consistent with the revised Federal rules at 30 CFR 816.49 and 817.49 (48 FR 43994, September 26, 1983). During the review of Alabama's proposed amendments, OSM identified a concern in that Alabama rules 880–X–10C–.20(j) and 880–X–10D–.20(j) did not require that impoundments be inspected upon completion of construction, as do 30 CFR 816.49(a)(10) and 817.49(a)(10).

On May 3, 1984, Alabama submitted modifications to its November 28, 1983 proposed amendments which addressed OSM's concern by requiring inspections immediately after construction. The Secretary finds that the amendments as modified on May 3, 1984, are no less effective than 30 CFR 816.49 and 817.49.

6. Alabama has amended rules 880–X–10C–.27 and 880–X–10D–.25 concerning postmining rehabilitation or removal of sedimentation ponds, diversions, impoundments and treatment facilities to be consistent with the revised Federal rules at 30 CFR 816.56 and 817.56 (48 FR 43994, September 26, 1983). The Secretary finds the Alabama rules to be no less effective than 30 CFR 816.56 and 817.56.

C. Non-Substantive Corrections to Alabama's Regulations

Alabama has revised certain parts of its rules to make non-substantive, primarily typographical, changes. The Secretary finds the corrections consistent with SMCRA and 30 CFR Chapter VII.

D. Findings on the Alabama Provisions Remanded in Citizens for Responsible Resource Development v. Watt

On November 15, 1983, OSM announced proposed actions concerning the remand of three Alabama program provisions by the United States District Court for the Middle District of Alabama in *Citizens for Responsible Resource Development v. Watt*, Civil No. 82–530–N, October 7, 1983 (48 FR 51941). Two of the three remanded provisions were proposed for reconsideration by OSM's November 15, 1983, notice in light of recent changes made to the Federal rules. The notice stated that OSM was seeking public comment on whether the existing Alabama provisions are in accordance with SMCRA and are now no less effective than the current Federal rules and that if the Secretary found that the existing State provisions met the revised Federal requirements, no further action by Alabama concerning these matters would be required.

The third remanded provision was proposed to be resolved by imposing a new condition of approval on the Alabama program. However, that action was superseded when Alabama submitted a proposed amendment to address the third remanded section. The three provisions are discussed below.

1. The first remanded provision concerns the Secretary's approval of Alabama's provision allowing partial bond release prior to topsoil replacement. Under the Federal rules which existed at the time the Alabama program was conditionally approved, 30 CFR 807.12 allowed the regulatory authority discretion to release sixty percent of the bond upon completion of Phase I reclamation. The Federal rules at 30 CFR 807.12(e)(1) required topsoil replacement as one of the elements which must be finished in order for reclamation Phase I to be deemed to have been completed. Alabama's provision at 880–X–9D omits this requirement. However, the Federal rules

have since been changed. The new rule at 30 CFR 800.40(c)(1) provides that Phase I reclamation which would allow partial bond release may include topsoil replacement, but the requirement of topsoil replacement is no longer mandatory (48 FR 32932, July 19, 1983).

Therefore, the Secretary finds that the existing Alabama provision is in accordance with SMCRA and is now no less effective than the revised Federal rule at 30 CFR 800.40(c)(1). No change is required.

2. The second remanded provision concerns the Secretary's approval of Alabama's rules governing bond replacement in the event of the insolvency of a surety or bank. Under the Federal rules that existed at the time the Alabama program was conditionally approved, 30 CFR 806.12(e)(6)(iii) and (g)(7)(iii) provided that during the period an operator is without bond coverage and is seeking a replacement bond, the regulatory authority shall conduct weekly inspections of the affected site(s). The Alabama counterparts at 880–X–9C–.03(5)(e)(3) and (6)(h)(iii) omit this requirement. Subsequent to the Secretary's conditional approval of Alabama's program, the Federal rules concerning bond replacement were changed to no longer require weekly inspections. See 30 CFR 800.16(e)(2), 48 FR 32932, July 19, 1983. Therefore, the Secretary finds that the existing Alabama provision is in accordance with SMCRA and is now no less effective than the revised Federal rule at 30 CFR 800.16(e)(2).

3. The third remanded provision concerns approval of variances from the approximate original contour requirements for steep slope mining. The Federal rules at 30 CFR 785.16(c)(4)(iii) provide that the appropriate State environmental agency must approve a variance from the approximate original contour restoration requirements for steep slope mining. The District Court remanded to the Secretary the corresponding provision in the Alabama program. Specifically, the court noted that Alabama's rule at 880–X–8J–.07 (previously codified as 785.16(c)(4)) is inconsistent with SMCRA and the Federal rules because it omits any reference to the need for the appropriate State environmental agency to approve variance plans. The court decided that the Federal rules establish a two-tiered variance approval system whereby the regulatory authority may issue a permit which incorporates a variance from the requirements for restoration of the affected lands to their approximate original contour only if the appropriate State environmental agency approved the plan. The court held that since the Alabama regulation provides only a one-tier variance approval system, it is less stringent than and does not meet the applicable provisions of SMCRA.

The District Court remanded this provision of the Alabama program to the Secretary with instructions to rectify this matter. Therefore, the Secretary proposed to add a new condition to the Alabama program whereby the State would have to amend its program by specified date to incorporate requirements no less effective than 30 CFR 785.16(c)(4)(iii).

However, that action has been superseded because as part of its November 28, 1983 submission, Alabama submitted a proposed amendment to address this provision. Alabama submitted a draft memorandum of understanding between the Alabama Department of Environmental Management (ADEM) and the Alabama Surface Mining Commission (ASMC) which would, when finalized, provide for necessary consultation and approval authority on variances from approximate original contour for steep slope mining in accordance with 30 CFR 785.16(c)(4)(iii) and the decision of the District Court.

The memorandum provides in paragraph five for ASMC to submit to ADEM for review and approval or disapproval any preliminary determination by ASMC that a variance from the approximate original contour requirements proposed to be incorporated into a permit to conduct surface mining and reclamation operations on steep slopes will improve the watershed of lands within the proposed permit and adjacent areas. The memorandum was signed and became effective on January 12, 1984. The memorandum is incorporated in the Alabama program in Chapter V, the systems section, pursuant to 30 CFR 731.14(f) and 731.14(g)(9). Alabama's Chapter V, § 731.14(f), includes all supporting agreements between agencies having duties in the State program. Section 731.14(g)(9) provides for coordinating the issuance of permits with other agencies and requires, pursuant to section 22(e)(3)(C) of the State Act, the the ASMC obtain the approval of an appropriate State environmental agency prior to an approval of any variance from approximate original contour for steep slope mining. Section 731.14(g)(9) further provides that the "appropriate State environmental agency" and the procedures for obtaining approval will be as provided in the current memorandum of understanding in Chapter V, § 731.14(f) of the State program.

The Secretary finds that the memorandum of understanding provides for the necessary consultation and gives the ADEM the authority to approve or disapprove variances from approximate original contour for steep slope mining, and therefore is no less effective than the Federal regulations.

IV. Public Comments

The responses to public comments received are set forth below.

Two commenters supported the imposition of a condition of approval to require Alabama to amend its program to include a counterpart to 30 CFR 785.16(c)(iii), in order to comply with the decision of the District Court in *Citizens for Responsible Resource Development v. Watt*. The Secretary has determined that imposition of a condition is no longer necessary because Alabama has submitted a program amendment to accomplish the same purpose. The Secretary has found that the memorandum of understanding, as implemented in the systems section of the Alabama program, is no less effective than 30 CFR 785.16(c)(iii). *See* Finding III.D.3. above.

Acknowledgments pertaining to the Alabama amendments being acted upon today were received from the following government agencies:

Department of Labor

Mine Safety and Health Administration

Department of the Army

Corps of Engineers

The disclosure of government agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Secretary's Decision

The Secretary, based on the above findings, is approving the November 28, 1983, amendments to the Alabama progam and is removing conditions (d), (e), and (m)(5). The Secretary has, based upon the above findings, decided to approve all of the other changes to Alabama's rules that are unrelated to conditions of approval. The Secretary is also approving the memorandum of understanding between the Alabama Department of Environmental Management and ASMC, and the revised systems section of the Alabama program.

The Secretary is amending Part 901 of 30 CFR Chapter VII to reflect approval of the above State program modifications.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

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

Dated: June 28, 1984.

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.

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

PART 901—ALABAMA

§ 901.11 [Removed]

1. 30 CFR Part 901 is amended by removing § 901.11.

2. 30 CFR 901.15 is amended by adding a new paragraph (c) as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(c) The following amendments were approved effective July 5, 1984:

(1) Alabama revised regulations, submitted on November 28, 1983, as modified on May 3, 1984. These revisions were made to the following sections of Alabama rules:

880–X–8C–.06, 880–X–10C–.36, 880–X–10D–.33, 880–X–10C–.13,
880–X–10D–.13, 880–X–10C–.17, 880–X–10D–.17, 880–X–10C–.20,
880–X–10D–.20, 880–X–10C–.27, 880–X–10D–.25.

(2) Alabama revised systems, Chapter V, § 731.14(f) and 731.14(g)(9), including the Memorandum of Understanding between the Alabama Department of Environmental Management and the Alabama Surface Mining Commission, signed January 12, 1984.

[FR Doc. 84–17811 Filed 7–3–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Extension of Deadline for Satisfaction of Condition of the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the Secretary of the Interior's decision to extend the deadline for Ohio to satisfy a condition of approval of the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition concerns the Ohio bonding system.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)–(f)10), (g), (h)(1)–(h)(3), (i)(1)–(i)(3), (j) and (k)(1)–(k)(5). In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983; deficiency (e) by September 16, 1982; and the remaining deficiencies by February 8, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

On January 6, 1983, Ohio submitted materials to OSM intended to, among other things, satisfy condition (h). On May 24, 1983, the Secretary approved certain of the amendments and removed a number of conditions, including (h)(2) and (h)(3), but found that condition (h)(1) was not fully satisfied. Condition (h)(1) requires the State to revise its bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited. The Secretary established a deadline of August 8, 1983, for the State to meet condition (h)(1).

On July 26, 1983, Ohio requested an extension of time to meet certain conditions, including condition (h)(1). A six-month extension, until February 8, 1984, was granted on October 11, 1983 (48 FR 46027).

Despite the extension, on August 1, 1983, Ohio submitted a proposed program amendment to satisfy condition (h)(1) and explain that it was submitting the amendment in order to allow OSM sufficient time to review it and require any necessary changes. On March 13, 1984, the Secretary determined that the modification did not fully satisfy the condition and extended until April 15, 1984, the deadline for Ohio to satisfy the condition. (47 FR 9418).

Request to Extend Deadline

On April 16, 1984, the Chief of the Ohio Division of Reclamation wrote to OSM requesting that Ohio be granted an extension of time to meet this condition. The Division requested a one-year extension, until April 30, 1985, The Chief noted in his letter that the State has already complied with three of the four steps that OSM specified were necessary in order to satisfy condition (h)(1). The remaining step, that of assuring that sufficient funding is available to support the alternative bonding program, requires action by the Ohio Legislature. The Division explained that despite its efforts, due to the complexity of the bonding issue and the short 1984 legislative session, it was unable to have a bill introduced and passed. The Ohio Legislature reconvened for a two-week period in mid-May, recessed and will not return until January 1985.

In accordance with the State's request, on May 8, 1984, OSM published a notice in the **Federal Register** (49 FR 19525) proposing that the deadline for the State to meet condition (h)(1) be extended until April 30, 1985. Comment