10, or 113.4 grams of tiamulin (as the hydrogen fumarate) per pound to make a Type C swine feed containing 35 grams of tiamulin per ton for control of swine dysentery associated with *Treponema hyodysenteriae* susceptible to tiamulin and 10 grams per ton for increased rate of weight gain. The drug had been previously approved for use in swine drinking water to treat swine pneumonia due to *Haemophilus pleuropneumonia* and swine dysentery associated with *Treponema hyodysenteriae*, susceptible to tiamulin.

The NADA is approved and the regulations are amended in 21 CFR 558.4(d) in the table entitled "Category I" by adding a new entry alphabetically and by adding new 21 CFR 558.600. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b)· 21 CFR 5.10 and 5.83.

2. By revising § 558.4(d) in the table entitled "Category I" to add a new entry alphabetically to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent [1] type A	Type B maximum (200×)	Assay limits percent [1] type B/C [2]
* *	* *	* *	*
Tiamulin	113.4 g/lb 100-108	3.5 g/lb (0.8%)	90-115
	5 and 10 g/1b 90-115		70-130
* *	* *	* *	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

3. By adding new§ 558.600 to read as follows:

§ 558.600 Tiamulin.

(a) *Approvals.* Type A article containing 5, 10, or 113.4 grams of tiamulin (as tiamulin hydrogen fumarate) per pound to 054273 in § 510.600(c) of this chapter.

(b) *Related tolerances.* See § 556.738 of this chapter.

(c) *Conditions of use in swine.*—(1) *Amount.* 35 grams of tiamulin per ton.

(i) *Indications for use.* For control of swine dysentery associated with *Treponema hyodysenteriae* susceptible to tiamulin.

(ii) *Limitations.* Feed continuously as sole ration on premises with a history of swine dysentery but where signs of disease have not yet occurred or following approved treatment of disease. Withdraw 2 days before slaughter. Not for use in swine over 250 pounds body weight. Use as only source of tiamulin. Swine being treated with tiamulin should not have access to feeds containing polyether ionophores (e.g., lasalocid, monensin, narasin, or salinomycin) as adverse reactions may occur.

(2) *Amount.* 10 grams of tiamulin per ton.

(i) *Indications for use.* For increased rate of weight gain from weaning to 125 pounds body weight.

(ii) *Limitations.* Feed continuously as sole ration to starter-grower pigs. Use from weaning to 125 pounds body weight. Use as sole source of taimulin. Swine being treated with tiamulin should not have access to feeds containing polyether ionophores (e.g., lasalocid, monensin, narasin, or salinomycin) as adverse reactions may occur.

Dated: July 8, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-16094 Filed 7-16-87; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; No Cause Determinations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Rule.

SUMMARY: The Equal Employment Opportunity Commission proposed to revise its procedural regulation (29 CFR Part 1601) to implement the Policy Statement on No Cause Determinations adopted by the Commission on December 15, 1986. 52 FR 11503 (April 9, 1987). This final rule adopts a review process by the Commission from District Directors' letters of determination that find no reasonable cause to believe that unlawful employment discrimination has occurred.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Leonora L. Guarraia, Director, Determinations Review Program, Office of Program Operations (202) 634-6905.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity

Commission issued a Notice of Proposed Rulemaking, 52 FR 11503 (April 9, 1987), proposing to establish a review procedure of cases where the field office director (referred to in the regulations as issuing director) finds there is not reasonable cause to believe that discrimination has occurred or is occurring. The Commission received eleven comments on the proposal. After a careful review of the comments, the Commission has decided to adopt the review procedure with several minor changes. At this time, the Commission is issuing final regulations on §§ 1601.6, 1601.18, 1601.19, 1601.21 (a) and (d), 1602.24(a) and 1601.28(b). A summary of the comments and changes to these sections is set out below.

The comments raised eight issues regarding the proposed review process. A number of commenters expressed concern that the review process, by creating another step in the investigative and decision-making process, will create a backlog and will delay the resolution of charges in which no cause determinations have been made by the issuing director. Similarly, commenters requested assurances that sufficient resources will be devoted to the Determinations Review Program to process the reviews in a timely and thorough manner. The Commission is committed to the Review Program as a part of its mission as a law enforcement agency and will ensure that the Determinations Review Program will receive sufficient resources to meet the demands of the Program, and that reviews will be accomplished in as timely and thorough a manner as is possible.

Several commenters suggested that the review process be extended to cause determinations by issuing directors, as well as to no cause determinations. The Commission has determined that its review of all cause determination cases prior to litigation is sufficient, and that an additional review process for cause determinations prior to the litigation reviews generally would be redundant.

Comments recommended that regulations include a section providing for notification to respondents of the Commission's acceptance of a request for review. While it was the intent of the Commission to provide such notification, for clarification purposes, the Commission has added a subparagraph at section 1601.19(a)(4) providing for issuance of a notice of review to all parties to the charge upon acceptance by the Commission of a request for review.

Some commenters requested that the regulations spell out a standard for granting an extension of time in which to request a review of an issuing director's no cause determination. The Commission has decided to delete the extension of time language from the regulations. If the Determinations Review Program receives any written communication from a charging party postmarked within the fourteen day period, it shall treat it as a timely request for review. After the fourteen day period, the issuing director's no cause determination becomes final and any further review would have to be by way of reconsideration of the final determination by the issuing director.

The comments recommended that charging parties and others who may request review of issuing directors' no cause determinations be required to submit reasons for their requests for review. While the Commission does not believe this is necessary, the issuing director's determination will include a form request for review which will request a statement of reasons for the review.

At least one comment suggested that the Commission adopt procedures to make clear to charging parties the right to request review of issuing directors' no cause determinations. The Commission agrees with the comment and intends to inform the charging party of the review step throughout the investigative process, especially during intake counselling sessions, in predetermination interviews and in the issuing director's letter of determination.

A number of comments recommended that the Commission adopt a standard of review for the review procedure. The Commission finds it unnecessary to enunciate a standard of review in the regulations because the Determinations Review Program will not operate like an appellate body considering appeals under a standard of review. The Program will generally review the issuing director's determination to determine whether there has been an incomplete investigation or an erroneous interpretation or application of law or fact.

One comment proposed that the review process be extended to issuing directors' jurisdictional dismissals of charges, as well as to no cause determinations. The comment recommended that the review process apply to dismissals that involve substantive factual or legal determinations. The Commission has decided not to adopt the proposal. The Review Program was designed to review no cause determinations for completeness of the investigation and correctness of the decision made. Generally, jurisdictional matters raise much narrower factual or legal questions than the more involved investigations and findings of no cause determinations. As part of its evaluation of this program, the Commission may consider adding other dismissals to the review program in the future.

Clarifying changes have been made to the regulations affected. A new § 1601.19(c) has been added to address issuing directors' no cause determinations for cases processed by 706 agencies. As stated in the Notice of Proposed Rulemaking, charges processed by 706 agencies are not included in the review process because the Commission reviews them for substantial weight pursuant to §§ 1601.21(e) and 1601.76. The proposed § 1601.19(c) has been redesignated § 1601.19(e) and a new § 1601.19(d) has been added.

Accordingly, Part 1601 is amended as follows:

Dated: July 10, 1987.

For the Commission.

Clarence Thomas,

Chairman.

PART 1601—[AMENDED]

1. The authority citation for 29 CFR Part 1601 continues to read as follows:

Authority: Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-12(a), unless otherwise noted.

§ 1601.6 [Amended]

§ 1601.18 [Redesignated as § 1601.6(b)]

2. 29 CFR 1601.6 is amended by designating the current text of the section as paragraph (a) and by redesignating the text of § 1601.18 as paragraph (b) of § 1601.6.

§ 1601.19 [Redesignated as § 1601.18 and amended]

3. 29 CFR 1601.19 is redesignated as § 1601.18 and amended as follows:

Paragraph (b) is removed, and paragraphs (c), (d), (e), (f) and (g) are redesignated as paragraphs (b), (c), (d), (e) and (f), respectively.

Redesignated paragraph (e) is amended by revising the first sentence as follows: "(e) Written notice of disposition, pursuant to paragraphs (a), (b), (c) or (d) of this section, shall be issued to the person claiming to be aggrieved and to the person making the charge on behalf of such person, where applicable; in the case of a Commissioner charge, to all persons specified in § 1601.28(b)(2); and to the respondent. * * * "

Redesignated paragraph (f) is amended by removing the third sentence and by revising the second sentence as follows: "(f) * * * The Commission hereby delegates authority to Area Directors or Local Director to dismiss charges pursuant to paragraphs (a), (b) and (c) of this section, as limited by § 1601.21(d). * * * "

4. A new § 1601.19 is added as follows:

§ 1601.19 No cause determinations: Procedure and authority.

(a) Where the field office completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination or as to some but not all issues addressed in the determination, the issuing director shall issue a letter of determination to all parties to the charge indicating the finding. The issuing director's letter of determination shall not be final when issued. The letter of determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to request a review of the determination by the Commission. The person claiming to be aggrieved or the person on whose behalf a charge was filed may request a review of the issuing director's determination within 14 days of the date of the issuing director's determination by the Director, Determinations Review Program, Office of Program Operations, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507. The issuing director's letter of determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in federal district court within 90 days of the date that the issuing director's letter of determination becomes the Commission's final determination.

(1) If the person claiming to be aggrieved or the person on whose behalf a charge was filed does not timely request a review of the issuing director's letter of determination, the letter of determination shall become the final determination of the Commission on the 15th day from the date of the issuing director's letter of determination. If the person claiming to be aggrieved or the person on whose behalf a charge was filed submits a timely request for review of the issuing director's letter of determination, the Commission shall process the request for review and issue a final determination. If, on review, a finding of reasonable cause is made, then the Commission shall issue a reasonable cause determination and process the charge in accordance with this part.

(2) A request for review shall be deemed timely if it is personally delivered or postmarked within 14 days after the date of the issuing director's letter of determination, or if, in the absence of a postmark, it is received by mail within 19 days from the date of the issuing director's letter of determination.

(3) Where a request for review is accepted by the Director, Determinations Review Programs, a notice of review shall promptly issue to all parties to the charge.

(4) The review procedure provided in this subsection shall not apply to charges processed by 706 agencies under contract with the Commission.

(5) The Commission hereby delegates authority to District Directors or upon delegation to Area Directors or Local Directors, except in those cases involving issues currently designated by the Commission for priority review, to issue a director's no cause letter of determination. The Commission hereby delegates authority to the Director, Determinations Review Program, Office of Program Operations, to issue Commission determinations of no reasonable cause following review.

(b) In those instances in which the Commission has not delegated the authority to issue no reasonable cause determinations to field offices, and the Commission or the Program Director or designee, Office of Program Operations, finds that no reasonable cause exists to believe an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a decision or a letter of determination or the Program Director, Office of Program Operations, shall issue a letter of determination to all parties to the charge indicating the finding.

(1) A letter of determination or decision issued under this subsection shall be final when issued, and shall inform the person claiming to be aggrieved, the person on whose behalf a charge was filed or those persons specified in § 1601.28(b)(3)(ii) of the right to sue in federal district court within 90 days of the date the person claiming to be aggrieved or the person on whose behalf a charge was filed receives the letter of determination.

(2) The Commission hereby delegates authority to the Program Director, Office of Program Operations or upon delegation the Directors, Regional Programs, Office of Program Operations, except in those cases involving issues currently designated by the Commission for priority review, to issue no cause letters of determination.

(c) In those instances in which a charge was processed by a 706 agency under contract with the Commission and the Commission finds that no reasonable cause exists to believe an unlawful employment practice occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a letter of determination to all parties to the charge indicating the finding.

(1) A letter of determination issued under this subsection shall be final when issued, and shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in federal district court within 90 days of the date the person claiming to be aggrieved or the person on whose behalf a charge was filed receives the letter of determination.

(2) The Commission hereby delegates authority to District Directors or upon delegation to Area Directors or Local Directors, except in those cases involving issues currently designated by the Commission for priority review to issue no cause letters of determination.

(d) The Commission shall not issue a separate notice of right to sue for no cause determinations.

(e) The Commission may on its own initiative reconsider a final determination of no reasonable cause and an issuing director may, on his or her own initiative reconsider his or her final determination of no reasonable cause. If the Commission or an issuing director decides to reconsider a final no cause determination, a notice of intent to reconsider shall promptly issue to all parties to the charge. If such notice of intent to reconsider is issued within 90 days of receipt of the final no cause determination, and the person claiming to be aggrieved or the person on whose behalf a charge was filed has not filed suit and did not request and receive a notice of right to sue pursuant to § 1601.28(a) (1) or (2), the notice of intent to reconsider shall vacate the letter of determination and shall revoke the charging party's right to bring suit within 90 days. If the 90 day suit period has expired, the charging party has filed suit, or the charging party had requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider shall vacate the letter of determination, but shall not revoke the charging party's right to sue in 90 days. After reconsideration, the Commission or issuing director shall issue a new determination. In those circumstances where the charging party's right to bring suit in 90 days was revoked, the determination shall include notice that a new 90 day suit period shall begin upon the charging party's receipt of the determination. Where a member of the Commission has filed a Commissioner charge, he or she shall abstain from making a determination in that case.

§ 1601.21 [Amended]

5. 29 CFR 1601.21(a) is revised as follows:

(a) After completing its investigation, where the Commission has not settled or dismissed a charge or made a no cause finding as to every allegation addressed in the determination under § 1601.19, the Commission shall issue a determination that reasonable cause exists to believe that an unlawful employment practice has occurred or is occurring under Title VII. A determination finding reasonable cause is based on, and limited to, evidence obtained by the Commission and does not reflect any judgment on the merits of allegations not addressed in the determination.

* * * * *

6. The first two sentences of 29 CFR 1601.21(d) introductory text are revised as follows:

* * * * *

(d) The Commission hereby delegates to District Directors or upon delegation, Area Directors or Local Directors; and the Program Director, Office of Program Operations or upon delegation, the Directors, Regional Programs, Office of Program Operations, the authority, except in those cases involving issues currently designated by the Commission for priority review, upon completion of an investigation, to make a determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties. Each determination issued under this section is final when the letter of determination is issued. * * *

* * * * *

§ 1601.24 [Amended]

7. The first sentence of 29 CFR 1601.24(a) is revised as follows:

(a) Where the Commission determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring and after the review provided for in § 1601.19, the Commission shall endeavor to eliminate such practice by informal methods of conference, conciliation and persuasion. * * *

* * * * *

§ 1601.28 [Amended]

8. 29 CFR 1601.28(b)(3) is amended by changing the reference from § 1601.19 to § 1601.18.

[FR Doc. 87-16115 Filed 7-16-87; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

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

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of program amendments submitted by Ohio as modifications to 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 amendments were submitted on May 16, 1986, with additional materials subsequently submitted on December 1, 1986. The amendments pertain to: definitions, applications for mining permits, public hearings, permit review, coal exploration, bonding procedures, performance standards, underground mining, small operator assistance program, lands unsuitable for surface mining, and inspection and enforcement procedures among others.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Columbus Field Office Director, Office of Surface Mining Reclamation and Enforcement, 2242 S. Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was conditionally approved by the Secretary of the Interior on August 16, 1982. This conditional approval was published in the **Federal Register** on August 10, 1982 (47 FR 34717). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program, 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**. Subsequent actions concerning the conditions of approval and program amendments may be found at 30 CFR 935.11 and 935.15, respectively.

II. Submission of Program Amendments

By letter dated May 16, 1986, the Ohio Department of Natural Resources, Division of Reclamation (DOR) submitted proposed amendments to Ohio's regulatory program. The changes were proposed to bring the Ohio program regulations into conformity with the revised Federal rules. Because State regulations are required to be no less effective than Federal rules, Ohio was asked to submit revised regulations to OSMRE for review and approval.

During review of the amendments, OSMRE identified concerns relating to several different sections of the proposed regulations. The concerns included premature closing of public records on bond release, reassessing good faith points following an abatement, coal exploration, use of an agricultural variance from approximate original contour, not requiring use of Soil Conservation Service soil reconstruction specifications, and not requiring the same management level on reclaimed land as on undisturbed land. OSMRE notified the State of these concerns, among others, by letter dated September 30, 1986.

On December 1, 1986, the DOR responded by submitting revisions to Ohio's regulations that addressed OSMRE's concerns. The revisions responded to all of OSMRE's objections with changes, explanations, or policy statements.

OSMRE published an announcement of the receipt of the modified amendment and the reopening and extension of the comment period in the **Federal Register** on February 2, 1987 (52 FR 3145). The notice stated that written comments, data, or other relevant information relating to this rulemaking would be accepted through March 4, 1987.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on May 16, 1986 and amended on December 1, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, with the exceptions discussed below. Only those provisions of particular interest are discussed in the specific findings. The provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules.

Headings of findings are numbered as listed in the Ohio Administrative Code (OAC), unless otherwise noted.

1. OAC 1501:13–1–01 Effective Date and Applicability

Revisions to this section include deletion of language in paragraphs (A) & (B) concerning approval of the Ohio permanent program and the transition from the interim to permanent programs. Other revisions include revised references for surface and underground mine operations. The Director finds that the amendments to OAC 1501:13–1–01 are no less effective than the Federal regulations in 30 CFR 701.11.

2. OAC 1501:13–1–02 Definitions

Revisions to this section include consolidation of definitions of terms from other sections of the rules, addition of new terms being defined, and revisions to definitions of previously defined terms. New terms and/or substantive revisions to existing terms include the following: coal exploration permit, coal mine waste, coal preparation, coal preparation plant, coal processing waste, collateral bond, complete application, cumulative hydrologic impact assessment, engineer, excess spoil, forfeiture of performance bond, fragile lands, general area, head-of-hollow fill, highwall remnant, historic lands, impounding structure, impoundments, incremental area, monitoring, mountaintop removal mining, MSHA, natural hazard lands, notice of intention to explore, operation, operator, permanent impoundment, permit year, person, previously mined area, principal shareholder, probable hydrologic consequences, property to be mined, public park, publicly owned park, reasonably available spoil, refuse pile, remining, road, sedimentation pond, self-bond, soil horizons, substantial legal and financial commitments in a coal mining operation, substantially disturb, support facilities, surface mining operations, surveyor, temporary impoundments, topsoil, underground development waste, valley fill, and violation notice. The Federal regulations at 30 CFR 701.5 and 761.5 address definitions of those terms used in the regulations. The terms listed above are defined so that they are no less effective than their Federal counterparts.

The definition of "cemetery" was not revised by Ohio as required by the Director's letter to Ohio dated November 6, 1985. As indicated in that letter, the U.S. District Court for the District of Columbia remanded the OSMRE definition of cemetery in so far as it excludes private family burial grounds. Ohio's response to this deficiency as indicated in a letter dated December 1, 1986 is as follows:

Ohio recognizes that the U.S. District Court for the District of Columbia found that OSMRE had no basis for distinguishing between family burial grounds and other cemeteries, and therefore remanded that portion of the federal definition of cemetery that had excluded family burial grounds and isolated grave sites. However, in *Holmes Limestone Co.* v. *Watt*, 655 F. 2d 732, 17 ERC 1031 (1981), the U.S. Court of Appeals for the Sixth Circuit reversed and remanded the lower court decision which dissolved a preliminary injunction against the Department of the Interior from enforcing a prohibition against mining within 100 feet of a family burial plot. The appellate court in this judicial district clearly held that it had the jurisdiction to consider Holmes Limestone's challenge to the Department of the Interior's enforcement action, and stated further that "(t)here is no evidence that Congress ever intended to regulate private family burial plots not open to the public." 17 ERC 1031 at 1037. On remand, the lower court granted the preliminary injunction based on the likelihood that a private family burial plot may not be considered a cemetery within the meaning of the Act. Ohio's current definition of cemetery found at OAC section 1501:13–1–02(M) of its proposed rule is consistent with the above ruling of the Federal District Court of Appeals for Ohio. Therefore, pending a resolution of these conflicting district court decisions, Ohio is subject to the ruling of its respective federal district court.

The Director disagrees with Ohio's interpretation of the Sixth Circuit and U.S. District Court of the Northern District of Ohio's findings. While the dicta in the Sixth Circuit's opinion are informative, the holding was to reverse and remand the case to the District Court for further action. The District Court also did not rule on the merits of the case, because the issue was moot as a result of OSMRE changing the definition of cemetery to exclude family burial grounds from the meaning of cemetery. It was the OSMRE definition on which the Ohio Northern District Court based its decision and the District of Columbia District Court subsequently remanded that definition as not being consistent with SMCRA.

In 30 CFR 761.5, the phrase "except for private family burial grounds" was suspended by OSMRE. (51 FR 41960, November 20, 1986). The Ohio definition of cemetery does not include private family burial grounds. Therefore, the Director finds that OAC 1501:13–1–02(M) is less effective than 30 CFR 761.5 and is disapproving it. Ohio is being required to amend its program to be no less effective than the Federal provision.

3. OAC 1501:13–1–10 Availability of Records

This section is revised to require maintenance of records concerning permit applications, revisions, renewals, transfers, and inspection and enforcement actions. These records are to be located and available to the public at the local district office of DOR. Records must be maintained for five years following bond release. The section also elaborates on records which are confidential and unavailable to the public. The Federal regulations at 30 CFR 840.14 address availability of records. The Director finds that the requirements in OAC 1501:13–1–10 are no less effective than the Federal regulations.

4. OAC 1501:13–1–13 Rule References

As proposed, this rule specifies how rule references are to be interpreted. The Director finds that there is no Federal counterpart to this rule and that the rule is not inconsistent with SMCRA and is no less effective than 30 CFR Chapter VII.

5. OAC 1501:13–3–03 Areas Where Mining is Prohibited or Limited

Revisions to this rule address prohibition of mining within the wild and scenic rivers system and state-designated nature preserves and within 1000 feet of state-designated scenic areas. The revision adds study rivers and study river corridors as established in any guidelines pursuant to the Act in accordance with OSMRE rules at 30 CFR 761.11(a), as published in the **Federal Register** (51 FR 25818, July 16, 1986). The rule also prohibits mining on lands listed or eligible for listing on the National Register of Historic Places. 30 CFR 761.11(c) as published in the **Federal Register** (52 FR 4261, February 10, 1987) does not prohibit mining on eligible sites. The Director finds that OAC 1501:13–3–03 is no less effective than 30 CFR 761.11.

6. OAC 1501:13–3–04 Procedures for Identifying Areas Where Mining Is Prohibited or Limited

Revision to paragraph (A) adds a requirement that the National Park Service and the U.S. Fish and Wildlife Service be notified of requests for determination of valid existing rights on areas within their jurisdiction. Paragraph (C) sets provisions for a thirty-day comment period and extensions to that period. The rule also requires at least two weeks' public notice of meetings to discuss mining within 100 feet of the outside right-of-way of a public road and written findings of the meeting within 30 days. Paragraph (D) sets forth requirements for waivers for mining within 300 feet of occupied dwellings. Paragraph (E) includes places listed or eligible for listing on the "National Register of

Historic Places." 30 CFR 761.12(f)(1), as published in the Federal Register (52 FR 4261, February 10, 1987) does not require this phrase. The Director finds that revision to OAC 1501:13-3-04 is no less effective than 30 CFR 761.12.

7. OAC 1501:13-3-05 Criteria for Designating Areas Unsuitable for Coal Mining Operations

The definitions found in this rule have been deleted and redefined under OAC 1501:13-1-02. Paragraph (C) revises appeal proceedings of valid existing right determinations. Appeals of these determinations are to be directed to the Reclamation Board of Review. This revision is in accordance with the Federal requirements of 30 CFR 761.12(h). The Director finds this amendment to be no less effective than the Federal rule.

8. OAC 1501:13-3-06 Exploration on Land Designated as Unsuitable for Coal Mining Operations

The rule is revised for clarification purposes and there is no substantive change. The Director finds this rule to be no less effective than 30 CFR Part 772.

9. OAC 1501:13-3-07 Procedures for Designating Areas Unsuitable for Coal Mining Operations

Paragraph (A) is amended to specify criteria for demonstrating that a party has been adversely affected and sets minimum standards for allegations of facts and supporting evidence to be contained in unsuitability petitions and terminations of unsuitability designations. Paragraph (B) describes requirements for public notice of unsuitability petitions, defines frivolous petitions, and allows the Chief discretion in processing petitions on areas where a complete permit application has been received. Paragraph (C) sets out hearing requirements and requires a record of the hearing and what the record must include. Paragraph (F) allows the Chief discretion in the disclosure to the public of properties listed or nominated for listing on the "National Register of Historic Places" if such disclosure could endanger these properties. Paragraph (A) of OAC 1501:13-3-07 addresses the requirements in 30 CFR 764.13. Paragraph (B) of OAC 1501:13-3-07 addresses the requirements in 30 CFR 764.15. Paragraph (C) addresses the requirements in 30 CFR 762.15. Paragraph (F) addresses the requirements in 30 CFR 764.23. The Director finds that all amendments to OAC 1501:13-3-07 are no less effective than the Federal regulations described above.

10. OAC 1501: 13-4-01 General Contents Requirement for Permit Applications

Paragraph (A) is revised to include review by the Chief of renewals, significant revisions, and notices of intention to explore. The definitions have been deleted from paragraph (B) and placed under OAC 1501:13-1-02. The applicability statement in paragraph (C) is deleted. Applicability is addressed under OAC 1501:13-1-01. Under revised paragraph (B), coordination of review and issuance of permits with certain State and Federal laws is deleted. Other Federal laws are added for which coordination must occur. Additions include the Migratory Bird Treaty of 1918 and the Bald Eagle Protection Act. Paragraphs (E), (F), and (H) are deleted. Paragraphs (E), (F), and (H) had addressed the transition between interim and permanent programs. Paragraph (G) becomes paragraph (C). Paragraph (I) is now (D). Revisions include a requirement that technical analysis be performed by or under the direction of a professional on the subject and a requirement that maps distinguish phases of the mining conducted or to be conducted under different phases of law and regulation. New paragraph (E) increases the permit fee from $50 to $75 an acre. The Federal regulations at 30 CFR 773.12 address coordination of review and issuance of permits. Old paragraphs (E), (F), and (H), which are deleted, are addressed under 30 CFR 773.11 and no longer apply to the Ohio program since all operations are now under a permanent program permit. 30 CFR 777.13(b) requires that technical analysis be performed by or under the direction of qualified professionals on the subject matter. 30 CFR 777.14(b) sets out mapping requirements for different phases of mining and 30 CFR 777.17 requires permit fees to be determined by the regulatory authority. The Director finds that all amendments to OAC 1501:13-4-01 are no less effective than the Federal regulations described above.

11. OAC 1501:13-4-02 Requirements of Coal Exploration

Paragraph (A) requires that any person who intends to conduct coal exploration of any kind outside the area covered by a coal mining and reclamation permit file a written notice of intention to explore with the Chief. Except on areas designated as unsuitable for mining, exploration which will not result in substantial disturbance to the natural land surface may occur under the notice of intent. Exploration which will substantially disturb the land surface and all exploration on areas designated as unsuitable for mining requires the issuance of an exploration permit in addition to filing the notice of intent. Paragraph (B)(1) sets out requirements of the notice of intent which now include a map showing the location of the exploration area, a description of equipment to be used, a description of practices to be used to reclaim the area, and a statement that substantial disturbance will not occur. Paragraph (B)(2) sets out additional requirements for exploration that will substantially distrub the ground surface including a description of practices to be used to reclaim the area in accordance with OAC 1501:13-8-01 and an estimated timetable for conducting exploration and reclamation phases.

Paragraph (C) requires the Chief to review notices of intent to explore and determine whether substantial disturbance will or will not occur and to notify the person filing the notice that exploration may begin or that additional information is needed. Exploration permits shall be issued or denied within 60 days of the receipt of the notice of intent to explore. Paragraph (D) has no substantive revisions. Paragraph (E) requires that areas not substantially disturbed by exploration be reclaimed as specified by practices described in the notice of intent and OAC 1501:13-9-02 and that the person conducting the exploration notify the appropriate DOR district office of completion dates of exploration and reclamation. Paragraphs (F), (G), and (H) are not being revised substantially. Paragraph (I) directs appeals by adversely affected persons to the Reclamation Board of Review. OAC 1501:13-4-02 addresses the requirements found in 30 CFR part 772. 30 CFR 772.11(a) required notice of intent to explore outside a permit area during which 250 tons or less of coal will be removed. This regulation was suspended by OSMRE (51 FR 41961, November 20, 1986). The notice of intent to explore also requires submission of a narrative or map describing the area and a description of the exploration and reclamation methods. The Ohio amendment requires notices of intent for all exploration. 30 CFR 772.12 requires an exploration permit application where 250 tons or more of coal will be removed. OAC 1501:13-4-02(D) requires that any person who intends to remove more than 250 tons of coal obtain a coal mining and reclamation permit. Therefore, the Ohio regulations are no less effective than the Federal provisions. OAC 1501:13-4-02(D) requires that exploration which substantially disturbs the surface comply with performance standards and permit terms as does 30 CFR 772.13. The

Director finds that amendments to OAC 1513:13-4-02 are no less effective than the Federal regulations at 30 CFR Part 772.

12. OAC 1501:13-4-03 Permit Applications; Requirements for Legal and Financial Compliance and Related Information

Amendments to this section under paragraph (A) require submission of the name and street address of sole proprietors; information on pending and previous coal mining permits held in the United States; U.S. Department of Labor, Mine Safety and Health Administration identification numbers; and a statement requesting confidentiality of records if so desired. Paragraph (B) adds information requirements on violations received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant in connection with coal mining operations. Paragraph (D) is amended to indicate the submission of the road permit required under OAC 1501:13-3-04 with the application. Paragraph (E) establishes requirements to be met in requesting a permit term longer than five years. Paragraph (H) sets out requirements for facilities or structures used by two or more separately permitted operations. The changes to OAC 1501:13-4-03 address the Federal requirements of 30 CFR Part 778. The Director finds that amendments proposed to OAC 1501:13-4-03 are no less effective than the Federal provisions.

13. OAC 1501:13-4-04 Permit Application Requirements for Information on Environmental Resources

Revision to paragraph (A) adds a requirement that each application describe lands subject to coal mining over the life of the mine including sub-areas for which individual permits would be sought. Paragraph (B) was unchanged. Paragraph (C) requires additional geologic information to determine the probable hydrologic consequences, toxic-forming material, and feasibility of reclamation. The minimum requirements of the geologic description are elaborated. Paragraph (D) adds additional requirements to be met in the submission of ground water information and paragraph (E) specifies additional information to address surface water. Paragraph (F) requires alternative water supply information to include the suitability of the source for its intended use. Paragraph (G) adds a requirement for supplemental information if the probable hydrologic consequences suggest adverse effects. Paragraph (I) requires a land use map and a showing of productivity based on current data. New requirements for fish and wildlife data are required by paragraph (J). Minor revisions are made in paragraphs (K) and (L) concerning mapping requirements. The requirements in paragraph (M) are revised to reflect the U.S. Soil Conservation Service standards for investigation of prime farmlands. The amendments to OAC 1501:13-4-04(A) address the requirements in Federal regulation 30 CFR 779.12(a). Amendments to OAC 1501:13-4-04(E) address 30 CFR 780.22. Changes to OAC 1501:13-4-04 (D), (E), (F), and (G) address the requirements in 30 CFR 780.21. Revision to paragraph (I) addresses requirements in Federal regulation 30 CFR 780.23. Fish and wildlife requirements in paragraph (J) are found in 30 CFR 780.16. Paragraphs (K) and (L) address mapping requirements in 30 CFR 780.14. Paragraph (M) addresses prime farmland requirements in 30 CFR 785.17. The Director finds all amendments proposed to OAC 1501:13-4-04 to be no less effective than the Federal rules listed above.

14. OAC 1501:13-4-05 Permit Application Requirements for Reclamation and Operation Plans

Paragraphs (A) and (B) are unchanged and have been approved previously. Paragraph (C) addresses requirements for blasting plans to be submitted with permit applications and requires copies of approvals of state and federal agencies for blasting within 500 feet of active underground mines. Paragraph (D) requires a demonstration of suitability for topsoil substitutes and descriptions of irrigation, disease control, and measures proposed to determine vegetative success. Paragraph (E) includes revisions to the requirements addressing protection of the hydrologic balance and paragraph (F) spells out requirements for ground and surface water monitoring plans. Paragraph (H) addressed all information required to be submitted to address ponds, impoundments, banks, dams, and embankments. Revisions to paragraph (N) address disposal of excess spoil. Paragraph (O) addresses the air pollution control plan and (P), the Fish and Wildlife Plan. The Federal rules at 30 CFR 780.13 concern blasting plans. General requirements of reclamation plans are described in 30 CFR 780.18. Plans for the protection of the hydrologic balance are addressed in 30 CFR 780.21. 30 CFR 780.25 explains the requirements for the reclamation plan concerning ponds, impoundments, banks, dams, and embankments. The excess spoil disposal requirements are contained in 30 CFR 780.35. Air pollution control plan requirements are contained in 30 CFR 780.15. Requirements for the Fish and Wildlife Plan are detailed in 30 CFR 780.16. The Director has approved an amendment to OAC 1501:13-4-05(L) concerning disposal of excess spoil (51 FR 33034, September 18, 1986). This rule was effective on January 15, 1987 in Ohio. The rule proposed under this amendment revises references to paragraph letters. The Director finds that all amendments to OAC 1501:13-4-05 are no less effective than the Federal rules.

15. OAC 1501:13-4-06 Permit Applications, Revisions, and Renewals and Transfers, Assignments, and Sales of Permit Rights

This rule has been completely rewritten and the previous OAC 1501:13-4-06 will be rescinded. Paragraphs (A) and (B) contain requirements for applications for permit renewals. Paragraph (C) addresses revisions to permit applications. Paragraph (D) sets out requirements to be met for requests that the Chief prepare the determination of probable hydrologic consequences. Requirements to be met for revisions to permits are contained in paragraphs (E) and (F). Paragraph (G) requires the Chief to review permits no later than the middle of the permit term. Rules concerning the transfer, assignment, or sale of permit rights are described in paragraph (H). Paragraphs (I) and (J) require notification to the Chief of changes in persons responsible and addresses as shown in the permit. Paragraph (K) requires applicants eligible for S.O.A.P. assistance to file S.O.A.P. information with the complete permit application. Paragraph (L) requires pending applications to reflect any new law or rules adopted during the review of the application and paragraph (M) indicates that appeals to decisions by the Chief under this section be filed with the Reclamation Board of Review. The Federal rules in 30 CFR 774.15 address permit renewals. Paragraphs (C) and (D) have no Federal counterpart. Permit revisions are addressed in 30 CFR 774.13, which allows the regulatory authority to establish time periods for review and guidelines on the extent and scale of revisions and which requires extensions to the area of a permit to be made by applying for a new permit, with the exception of incidental boundary revisions. 30 CFR 774.11 addresses mid-term permit reviews by the regulatory authority and 30 CFR 774.17 explains the requirements for transfer, assignment, or sale of permit rights. Paragraphs (I), (J), (K), and (L) have no direct federal counterpart. 30 CFR Part 775 concerns administrative review of decisions on applications. The Director finds that amendments to OAC 1501:13-4-06 are no less effective than the Federal rules cited above.

16. OAC 1501:13-4-08 Hydrologic Map and Cross Sections

The changes to OAC 1501:13-4-08 require additional information to be shown on hydrologic maps. 30 CFR 780.14 addresses mapping requirements in the Federal rules and 30 CFR 780.21 indicates hydrology requirements. The Director finds that revisions to OAC 1501:13-4-08 are no less effective than the Federal rules discussed above.

17. OAC 1501:13-4-12 Requirements for Permits for Special Categories of Mining

Revisions to this section include numerous grammatical and reference changes. Changes are also included in paragraph (B) requiring additional information to be submitted with applications containing experimental practices and requiring reviews of the permits to be conducted at least every two and one-half years. Paragraph (C) contains minor revisions to the rules on mountaintop removal mining. Paragraph (E) revises rules that the Chief and applicant must follow to grant or obtain a permit which incorporates a variance from approximate original contour. Paragraph (f) amends portions of the rules dealing with prime farmland. Paragraph (I) addresses rules on coal preparation plants and support facilities and paragraph (K) sets out rules in remining situations. The amendment submitted by Ohio addresses the requirements contained in 30 CFR 785.13, 785.14, 785.15, 785.16, 785.17, and 785.21. The Director finds that the revisions submitted are no less effective than the Federal provisions.

18. OAC 1501:13-4-13 Underground Mining Permit Application Requirements for Information on Environmental Resources

Amendments to this section are similar to those previously addressed under OAC 1501:13-4-04 but apply to underground mines. Additional requirements are added to address special areas dealing with underground mines. Paragraph (C)(1)(d) concerns the subsidence control plan. Paragraph (C)(3)(d) addresses requirements for test borings on lands which will be mined without the removal of overburden. OAC 1501:13-4-13 is the Ohio counterpart to the Federal regulation 30 CFR Part 783 which sets forth minimum requirements for information on environmental resources for underground mines. The Director finds that the amendment to OAC 1501:13-4-13 is no less effective than the Federal rules in 30 CFR Part 783.

19. OAC 1501:13-4-14 Underground Mining Permit Application Requirements for Reclamation and Operations Plans

Revisions to this section are similar to those previously addressed under OAC 1501:13-4-05 but apply to underground mines. Additional requirements are added to address special areas dealing with underground mining. 30 CFR Part 784 sets forth the Federal requirements. The Director finds that amendments to OAC 1501:13-4-14 are no less effective than the Federal rules in 30 CFR Part 784.

20. OAC 1501:13-5-01 Review of Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

This section has been rewritten and the existing rule is to be rescinded. Paragraph (A) describes the requirements for public notices of filing of permit applications, renewals, and revisions. Paragraph (B) addresses comments and objections to applications and paragraph (C) concerns informal conferences concerning permit applications. Paragraph (D) spells out the preliminary review of applications to be done by the Chief and paragraph (E) sets the criteria that must be met for approval or denial of a permit application. Paragraph (F) describes general conditions of permits and rights-of-entry. The items discussed above address the requirements in 30 CFR 773.13, 773.15, and 773.17. The Director finds that the amendments to OAC 1501:13-5-01 are no less effective than the Federal rules in 30 CFR Part 773.

21. OAC 1501:13-6-03 Small Operator Assistance Program

Amendments to this section include the deletion of definitions in paragraph (B). The definitions are now located in 1501:13-1-02. Paragraph (C) is revised to more clearly establish eligibility requirements. Paragraph (D) adds additional mapping requirements and (E) is revised to require the Chief to notify the applicant of his decision on eligibility. Paragraph (F) is slightly revised to require qualified labs to make statements on drilling and to require Ohio to develop procedures for interstate coordination and exchange of data between states. Paragraph (G) adds qualifications for laboratories. Paragraph (I) addresses applicant liability for reimbursement of funds. Other editorial and nonsubstantive changes were made throughout this section. The Federal rules in 30 CFR Part 795 address the Small Operator Assistance Program. The Director finds that amendments to OAC 1501:13-6-03 are no less effective than 30 CFR Part 795.

22. OAC 1501:13-7-01 General Requirements for Bonding of Coal Mining and Reclamation Operations

This section is revised with minor grammatical and nonsubstantive changes and by deleting the definitions in paragraph (A). The definitions are now located in OAC 1501:13-1-02. Other revisions include paragraph (B), which allows the Chief, upon request, to release bond from areas that were not disturbed by surface coal mining operations. Paragraph (C) is revised to assure that permits be conditioned to require that adequate bond coverage be in effect at all times.

The Federal rules at 30 CFR 800.11 address the requirements to file a bond. 30 CFR 800.11(b) was remanded by the U.S. District Court of the District of Columbia for being inconsistent with SMCRA. The court held that since 30 CFR 800.11(b) allows bond to be posted for less than the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term, 30 CFR 800.11(b) is inconsistent with section 509 of SMCRA. OSMRE suspended in part 30 CFR 800.11(b) on February 21, 1985 (50 FR 7278). Ohio was informed by letters dated November 6, 1985, and September 30, 1986, that OAC 1501:13-7-01(A)(6) allows the use of incremental bonding and is, therefore, inconsistent with the court decision. The Secretary has appealed the determination that incremental bonding is inconsistent with SMCRA. The Director is deferring action on the approval of the OAC 1501: 13-7-01(A)(6) pending a decision on the appeal.

30 CFR 800.15 addresses adjustments to the amount of bond. 30 CFR 800.15(c) indicates that a permittee may request reduction of the amount of bond upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost to reclaim the area. It also indicates that bond adjustments which involve undisturbed areas are not considered bond release subject to the procedures of 30 CFR 800.40. 30 CFR 800.11(b) indicates that the bond must cover the

entire area of the permit upon which surface coal mining and reclamation operations will be conducted. The Director finds that the amendment to OAC 1501:13–7–01(B) is no less effective than the Federal rules cited above.

30 CFR 800.4(g) requires the regulatory authority to condition permits to require adequate bond coverage at all times. The Director finds that OAC 1501:13–7–01(C)(6), which contains a similar requirement, is no less effective than the Federal rule.

23. OAC 1501:13–7–02 Amount and Duration of Performance Bond

Paragraph (A) is amended to include a statement which allows the operator's financial liability for repairing subsidence damage to be satisfied by the liability insurance policy. Paragraph (C) is revised to address the period of liability under the performance bond. Information on the period of responsibility is deleted and is now addressed in OAC 1501:13–9–15. 30 CFR 817.121(b)(2) indicates that compensation for subsidence damage may be accomplished by purchase prior to mining of a noncancellable premium prepaid insurance policy. 30 CFR 800.13 addresses the period of liability for performance bond. The Ohio amendments are identical to the Federal standards. The Director finds that amendments to OAC 1501:13–7–02 are no less effective than the Federal regulations.

24. OAC 1501:13–7–03 Form, Conditions, and Terms of Performance Bonds

Several nonsubstantive and grammatical corrections were made to this section. Paragraph (B)(5)(g) is revised to set requirements upon the operator in the event the surety company is incapacitated. Paragraph (B)(6) makes changes to the requirements of collateral bonds and paragraph (B)(7) addresses letters of credit. Paragraph (B)(8) addresses requirements to be followed in the event that a bank holding the bond becomes incapacitated. Paragraph (B)(9) is revised to address notification requests by persons with an interest in collateral posted as bond. The Federal rules at 30 CFR 800.16 address the terms and conditions of bonds and 30 CFR 800.21 address collateral bonds. The Ohio amendments are identical to the Federal standards. The Director finds that the proposed revisions are no less effective than the Federal rules.

25. OAC 1501:13–7–04 Self-bonding

This section addresses new requirements for self-bonding. The rule, as written, is nearly identical to the Federal Rules in 30 CFR 800.23. The Director finds the amendment is no less effective than the Federal provisions.

26. OAC 1501:13–7–05 Procedures, Criteria, and Schedule for Release of Performance Bond

Revisions to paragraph (A) include the items of information required to be filed with a request for bond release. The information required for each phase is addressed. Also revised are certain requirements to be met in the public notice process of requested bond releases, in the changing of bond release hearings to informal conferences, and in other notification procedures. Paragraph (B) is revised to delete resoiling as a requirement for a phase I release and to add it to the phase II requirements. Other revisions to paragraph (B) include rewording of the prime farmland requirements for a phase II release and specifying success standards for a phase III release. Bond amounts to be released under each phase are revised to percentages instead of dollar amounts. The Federal rules in 30 CFR 800.40 address the requirements to release performance bond. The Ohio amendments are similar to the Federal regulations. The Director finds that the amendments to OAC 1501:13–7–05 are no less effective than the Federal rules.

27. OAC 1501:13–7–06 Performance Bond Forfeiture Criteria and Procedures

This section is revised with several nonsubstantive and grammatical corrections as well as substantive revisions. The amendment includes revisions to the bond forfeiture criteria, show-cause for abandonment procedures, forfeiture procedures, reclamation by the surety, and reclamation by the Chief. 30 CFR 800.50 addresses forfeiture of bonds under the Federal rules. The Ohio amendments are similar to the Federal regulations. The Director finds that amendments to OAC 1501:13–7–06 are no less effective than the Federal regulations.

28. OAC 1501:13–7–07 Liability Insurance

This section is amended to require that a permittee must have liability insurance except for reclamation operations performed by another agent in which case the agent must have the required insurance. The insurance must be in adequate amounts as prescribed in the rule. For applications received after this rule, the amounts are increased. The Federal rule at 30 CFR 800.60 addresses liability insurance. The Ohio amendments are similar to the Federal regulations. The Director finds that amendments to OAC 1501:13–7–07 are no less effective than the Federal rule.

29. OAC 1501:13–7–08 Bond Release Conference

This section sets out the requirements to be met for requests and procedures for holding bond released conferences. It also includes requirements for the Chief to issue decisions for bond releases and how appeals of those decisions are to be made. 30 CFR 800.40(f) addresses hearings on bond release. The Ohio amendments are similar to the Federal requirements. The Director finds that OAC 1501:13–7–08 is no less effective than 30 CFR 800.40.

30. OAC 1501:13–8–01 Coal Exploration and Performance Standards

This section has been totally revised. The amended rule is nearly identical to the Federal rule in 30 CFR Part 815 with the exception of two additional requirements not specified in the Federal rule. Ohio has also required that the use of explosives in exploration operations be in accordance with OAC 1501:13–9–06 and that the Chief be notified upon completion of exploration and reclamation. The Ohio amendments are similar to the Federal requirements. The Director finds that OAC 1501:13–8–01 is no less effective than 30 CFR Part 815.

31. OAC 1501:13–9–01 Signs and Markers

This section is revised by nonsubstantive changes and by the deletion of the requirement to post blasting signs. This requirement is now found in OAC 1501:13–9–06. The Director finds that the revisions are no less effective than the Federal regulations in 30 CFR 816.11/817.11.

32. OAC 1501:13–9–04 Protection of the Hydrologic System

Ohio has proposed substantial revision to this section. Paragraph (A) is revised to incorporate similar language concerning the general protection of the hydrologic system as that found in 30 CFR 816.41/817.41(a) of the Federal rules. Paragraph (B) is revised to include specific requirements to be met in obtaining an exemption from directing all drainage to a sediment pond. Other revisions are incorporated to include newly defined terms and phrases. Paragraph (B) incorporates changes found in 30 CFR 816.42/817.42 and 816.46/817.46 (b) and (e). Paragraph (C) has been amended to address maintenance of facilities. Similar provisions are found in 30 CFR 816.46/817.46(b)(5). Paragraph (D) now requires sediment control measures nearly identical to those required by the Federal rules in 30 CFR 816.45/817.45. Paragraph (E) is proposed to address stream buffer zones with very similar language to that in 30 CFR 816.57/817.57. Paragraph (F) addresses diversions and is nearly identical to 30 CFR 816.43/817.43 with the exception of using a 24-hour storm event in the design instead of the six-hour event used in the Federal rules. Paragraph (G) concerns siltation structures and is nearly identical to 30 CFR 816.46/817.46 with the exception of using a 24-hour storm event instead of a six-hour event in the design of ponds that meet the criteria of 30 CFR 77.216(a). Paragraph (H) sets out requirements on impoundments. Again the Ohio proposal is very similar to the Federal regulations in 30 CFR 816.49/817.49. Differences include the stability criteria used and the storm event used in design. The Ohio rule refers to the standards in Stat. 666, 16 U.S.C. 1006 instead of the 1.5 and 1.2 safety factors used in the present Federal rules. OSMRE revised 30 CFR 816.49/816.49 (a)(3) as published in the **Federal Register** on September 26, 1983, to adopt the 1.5 and 1.2 safety factors instead of referencing the standards in 16 U.S.C. 1006. In the preamble for the final rule OSMRE noted that the safety factors of 1.5 and 1.2 are comparable to those safety factors in U.S.C. 1006 but are simplified. Therefore, the Ohio requirement is as effective as the Federal requirement. Ohio also defines "sumps" and specifies criteria for their use in approved drainage control systems. Although the Federal rules do not address sumps, their use as a secondary sediment structure and haulroad drainage control structure does not conflict with the Federal rules. Paragraph (I) addresses discharge structures and is nearly identical to 30 CFR 816.47/817.47. Revisions to paragraphs (J), (K), and (L) are nonsubstantive. Paragraph (M) addresses surface water protection and is similar to 30 CFR 817.41/816.41(d). Paragraph (N) addresses monitoring of surface and ground water and is similar to those requirements in 30 CFR 816.41/817.41 (c) and (e). Paragraph (O) concerns transfer of wells and is nearly the same as 30 CFR 816.41/817.41(g). Revision to paragraph (P) adds an additional requirement to the water replacement standards which specifically requires reimbursement of costs to the landowner to obtain water until the supply is replaced. Paragraph (P) addresses water supply replacement similar to the Federal rule at 30 CFR 816.41(h). Revision to paragraph (Q) concerning discharges into underground mines is nearly identical to 30 CFR 816.41(i) and 30 CFR 817.41(h). The Director finds that all revisions proposed to OAC 1501:13–9–04 are no less effective than the Federal rules listed above.

33. OAC 1501:13–9–06 Use of Explosives

Revisions to this section were previously submitted by Ohio under program amendment number 26 with the exception of some minor changes. Program amendment 26 was approved by the Director in the **Federal Register** (51 FR 39528, October 29, 1986). Since this approval, Ohio revised paragraph (A) to address blasting in coal exploration operations. Ohio promulgated this rule effective March 1, 1987. The Director finds that the addition of coal exploration operations to the blasting rules is no less effective than 30 CFR 816.61/817.61.

34. OAC 1501:13–9–07 Disposal of Excess Spoil

The proposed rule submitted with this amendment has been replaced by the rule submitted and revised under program amendment number 23. Program amendment number 23 received the Director's approval in the **Federal Register** published on March 5, 1987 and September 18, 1986 (52 FR 6797 and 51 FR 33034, respectively). OAC 1501:13–9–07 was promulgated by Ohio and has an effective date of January 15, 1987. Any differences in the rule submitted under amendment number 25 have been superseded by the final rule effective January 15, 1987. The Director has previously acted on this rule as indicated above and found it to be no less effective than the Federal provisions.

35. OAC 1501:13–9–08 Protection of Underground Mining

This section is revised to require joint approval by the State regulatory authority, Federal Mine Safety and Health Administration, and State Division of Mines for mining within 500 feet of an underground mine. This revision closely resembles the Federal requirements in 30 CFR 816.79. The Director finds the amendment to be no less effective than the Federal rule.

36. OAC 1501:13–9–09 Disposal of Coal Mine Wastes and Non-Coal Mine Wastes

This section has been totally rewritten. Paragraph (A) closely resembles the Federal standards in 30 CFR 816.81/817.81 with the following exceptions. Paragraph (A)(4) requires foundation investigations and laboratory testing as deemed necessary by the certifying engineer, (A)(5) sets compaction requirements, and (A)(7) allows coal mine waste disposal in excess spoil fills in accordance with OAC 1501:13–9–07(k). Paragraph A(4) is inconsistent with 30 CFR 816.81/817.81(d) in that it allows the certifying engineer to determine the levels of foundation investigation and laboratory testing. OSMRE in promulgating 30 CFR 816.81/817.81(d) (48 FR 44014, September 26, 1983) indicated in the preamble that only the testing of the materials to be used in the embankment can be determined by the engineer. Paragraph (B) is also nearly identical to 30 CFR 816.83/817.83 with the exception that the diversion design storm event is 24–hour instead of six-hour.

Again, paragraph (C) is nearly the same as 30 CFR 816.84/817.83 with the exception of the design storm being 24–hour instead of six-hour. Paragraph (D) is the same as 30 CFR 816.87. Paragraph (E) is nearly identical to 30 CFR 816.89/817.89 with the exception of the lack of a corresponding section to 30 CFR 816.89/817.89(c). OSMRE suspended 816.89/817.89(d) (51 FR 41962, November 20, 1986) as per the decision by the U.S. District Court of the District of Columbia. It was suspended due to the lack of public notice and comment. The Ohio rule does not suffer from this deficiency. However, the Ohio rule does not prohibit disposal of non-coal mine waste in a refuse pile or impoundment structure, not does it prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area. The Director finds that the amendment to OAC 1401:13–9–09 is no less effective than the Federal rules cited above except for the lack of an Ohio counterpart to 30 CFR 816.89/817.89(c) and the need to require foundation investigations and laboratory testing consistent with 30 CFR 816.81/817.81(d). Ohio must amend its program to be no less effective than the Federal standards.

37. OAC 1501: 13–9–10 Training, Examination, and Certification of Blasters

Revisions to this section include minor grammatical changes, deletion of language concerning approval of the rule by OSMRE, and adding language which requires blasting on coal exploration operations to be conducted by a certified blaster. The Federal rules in 30 CFR Part 850 address certification of blasters. The Director finds that the revisions proposed to OAC 1501:13–9–10 are no less effective than the Federal regulations.

38. OAC 1501: 13–9–11 Protection of Fish, Wildlife, and Related Environmental Values

This section has been amended by adding that disturbances and adverse impacts on fish and wildlife be minimized to the extent possible using the best technology currently available. Paragraph (B) prohibits mining which would jeopardize endangered or threatened species, result in destruction of critical habitats, or result in unlawful taking of eagles, nests, or eggs. It also requires the Chief to consult with other wildlife agencies upon reports from operations of the presence of protected wildlife. Paragraph (C) encourages permanent ponds for wildlife use where cropland, pastureland, or undeveloped land uses are involved. Paragraph (D) sets out requirements for powerlines and haulroads as they apply to wildlife. OSMRE has proposed rules at 30 CFR 816.97 to address concerns of the U.S. District Court of the District of Columbia. (51 FR 19498, May 29, 1986.) These rules have not yet been finalized. The Director finds that the amendments proposed to OAC 1501:13–9–11 are no less effective than the current Federal rule at 30 CFR 816.97/817.97. However, when a new Federal rule is promulgated with changes to 30 CFR 816.97/817.97, Ohio will be notified of any changes that may be necessary to remain no less effective than the Federal rule.

39. OAC 1501:13–9–13 Contemporaneous Reclamation

This section has been rewritten to include an introductory paragraph nearly identical to the Federal requirement in 30 CFR 816.100/817.100. It also sets the minimum standards to be met by the operator for contemporaneous reclamation. The Director finds that the standards proposed are no less effective than the Federal rules.

40. OAC 1501:13–9–14 Backfilling and Grading

Paragraph (A) is revised to change rule references. Paragraph (B) is revised to indicate that the five-degree tolerance on slope measurements applies, provided that it does not conflict with the approved post-mining land use. Paragaph (C) is revised to require a minimum long-term safety factor of 1.3 for final slopes and to delete language which exempted previously mined areas from approximate original contour criteria. Paragraph (D) is added to require all spoil to be placed in the mined out area unless it is excess spoil. Paragraph (H) is revised to require repair of rills and gullies when they disrupt the post-mining land use or contribute to a violation of water quality standards. Paragraph (I) is revised to set our different requirements for the disposal of coal mine waste. Paragraph (K) spells out when variances from approximate original contour are permitted and when highwalls do not have to be totally eliminated due to previous mining. The Federal rules in 30 CFR 816.102/817.102, 816.106/817.106 and 819.19 address the backfilling and grading of areas affected by mining and augering. The Director finds that proposed changes to OAC 1501:13–9–14 are no less effective than the Federal rules.

41. OAC 1501:13–9–15 Revegetation

Paragraph (A) of this section is revised by defining the following terms: countable tree, ground cover, herbaceous species and woody plants. Paragraph (B) describes the general requirements of revegetation. Paragraph (C) explains the requirements to be met for the use of natural and introduced plant species. This section allows for certain exceptions for temporary cover and for cropland uses. Paragraph (D) requires seeding to be accomplished during the first normal period for favorable planting conditions following topsoil replacement. Paragraph (E) sets out mulching requirements and information that an operator must submit to show that mulch is not necessary. Revisions to paragraph (F) (1) and (2) indicate how success of revegetation is to be judged and when the period of extended responsibility begins. Paragraph (F)(3) indicates that vegetation must be established to obtain a phase II release and defines "established" on areas to be planted only with herbaceous species. An area can be released for phase III when the extended period of responsibility expires and the production standard and ground cover standards are met. The ground cover standards are also spelled out. Paragraph (F)(4) sets standards for cropland other than prime farmland. Revisions now require the area to meet ground cover standards of paragraph (F)(3)(c) to obtain a phase II release. To be eligible for a phase III release on cropland, the revision requires that when the five-year period of extended responsibility expires, the yield data of crop harvest from the last two years of the responsibility period equals or exceeds the average county yield for comparable crops. Paragraph (F)(5) sets out standards for revegetation success on prime farmland. Success is to be determined on the basis of an average crop production from the reclaimed area compared to the target yields specified in the Ohio Cooperative Extension Service Bulletin Number 685. Measurement of productivity must be initiated within ten years of resoiling. Reference crops must be selected from crops most commonly produced on surrounding prime farmland and, where row crops are dominant, the row crop requiring the greatest rooting depth must be used. To obtain a phase II release, the revisions require one year of crop harvest to equal or exceed the target yield. For a phase III release to be obtained, the five year period must expire and yield data from the last two years of the period, plus the one year submitted for the phase II, must equal or exceed the target yield.

Adjustments to crop yields can be made if approved by the Chief and the U.S. Soil Conservation Service for certain reasons. Paragraphs (F) (6) and (7) set out requirements of success of revegetation for industrial, residential and commercial land uses. Paragraph (F)(8) indicates success requirements for areas which require the planting of woody plants as the primary vegetation. Species must be compatible with the post-mining land use. Revegetation shall be determined to be successful for phase II bond release when there are at least six hundred trees or shrubs per acre and the herbaceous ground cover provides thirty percent cover or is sufficient to control erosion. To obtain a phase III release, the five-year period must expire and the area must have at least 400 countable trees per acre and sufficient herbaceous cover to control erosion or 30 percent cover, whichever is greater. Paragraphs (F) (9), (10), and (11) indicate requirements for other land uses including recreation land, commercial and non-commercial forest land, and fish and wildlife habitats.

The Federal rules in 30 CFR 816.111/817.111 describe the general requirements to be met for revegetation. OAC 1501:13–9–15 (A), (B), and (C) are nearly identical to 30 CFR 816.111/817.111. 30 CFR 816.113/817.113 and 816.114/817.114 address timing of revegetation and mulching and are very similar to OAC 1501:13–9–15 (D) and (E). 30 CFR 816.116/817.116 addresses standards for success and requires statistically valid sampling techniques for measuring success to be selected by the regulatory authority and included in the approved program. The sampling techniques shall use a 90 percent statistical confidence interval. The proposed Ohio rule does not identify a statistically valid sampling technique. However, along with the submission of this amendment, Ohio defended the current method of vegetative success analysis. The content of Ohio's submission is quoted below:

Item Number 33 requires that the Division adopt a statistically valid sampling technique for measuring success standards. The Division contends that, although its method of measuring revegetation is substantially different from the federal government's random sampling method, the Division is at least as effective as Federal regulations in this regard. The Division's rule, OAC 1501:13–9–15, does not require an estimation of the average cover on reclaimed land by the random placement of points of plots. The Division inspectors are trained to review the entire area proposed for bond release, rather than some smaller, statistically representative sample of the whole. In reviewing the success of ground cover, the Division inspectors do not approve any area proposed for release that has more than a total of 1 percent of the total area with less than 30 percent ground cover. In addition, no single area with less than 30 percent cover can exceed the lesser of 3,000 square feet or 0.3 percent of the total area proposed for release. No more than 10 percent of the area can have a cover of between 30 percent and 75 percent and at least 89 percent of the area must have at least 75 percent ground cover. In other words, the Division does not approve areas which contain large or numerous patches of lesser vegetation.

Random sampling, even when carried out in a statistically valid manner, will not always reveal that the area has large or numerous patches of poor vegetation, which is why the results of random sampling reviews are always qualified by an expression of sampling error. Ohio has not need to conform to a 90 percent statistical confidence interval because it does not utilize a sampling technique.

OSMRE has expressed concern regarding the manner in which the Division's inspectors are trained to evaluate the success of vegetation. New inspectors undergo an intensive training period, followed by an evaluation by their supervisors. Inspectors are trained during field inspections to distinguish the difference between barren land (land with less than 30 percent cover), sparse land (land with between 30 percent and 75 percent cover), and adequately vegetated land (land with at least 75 percent cover). They are also trained in the field measurement of areas that are less than adequately vegetated, so they are able to determine the percentage of the total area that is barren to sparse. The inspectors' initial training is supplemented periodically by refresher training courses for all staff.

In addition, inspectors are taught to pay particular attention to potential problem areas. Since inspectors conduct complete inspections of the areas affected by mining each calendar quarter, inspectors are well-acquainted with the areas to which they are assigned. At the time of a bond release inspection, inspectors not only review 100 percent of the area proposed for release, but also scrutinize carefully those areas which previously have had problems with erosion or poor revegetation, thereby providing another measure of protection for those areas. Unlike the Federal program, moreover, the Ohio program does not permit problem areas to be separated from the whole area proposed for release so that operators can obtain a release for all parts of a permit except the problem areas.

Ohio has indicated through the above information that they believe that since they do not do an evaluation of revegetation by a sampling technique, there is no need to have a statistically valid method, since their method is based on a 100 percent sample. OSMRE agrees that evaluation of the whole area is a valuable evaluation tool in conjunction with a sampling method to evaluate an area. However, the technique used by Ohio is highly dependent upon the training, experience, and objectivity of the inspector and can result in considerable variability among inspectors. Ohio has not provided information to demonstrate that the method utilized will achieve similar results to those required by the Federal regulations. Ohio did not submit information that explains their vegetative measurement evaluation techniques, that shows that their method is as effective as a statistically valid sampling technique, and that shows that the method produces a result with a 90 percent statistical confidence interval. Information did not include, at a minimum, comparison of Ohio's method to statistically proven methods, test plot results using different methods, training programs required of inspectors for the evaluation of vegetative success, support of Ohio's method by experts and agencies involved with vegetative evaluation, initiation of a training and testing program to ensure consistent review of vegetative success, and other items to show that Ohio's method is as effective as those outlined in 30 CFR 816.116/817.116. Therefore, the Director finds that Ohio's method of evaluation of revegetation in OAC 1501:13–9–15 is less effective than the Federal rules. The Director is, therefore, requiring Ohio to amend its program to be no less effective than the Federal regulations.

30 CFR 800.40(c)(2,3) sets standards for when plase II and III bond releases may occur and 30 CFR 816.116/817.116(c) sets standards for the beginning of the period of extended responsibility. The standards set by Ohio in OAC 1501:13–9–15(F) for phase II and III releases are broken down by different land use.

Standards under paragraph (F)(3) are similar to those addressed in the above-mentioned Federal rules with the exception of the ground cover standards discussed. Standards under (F)(4) address cropland, other than prime farmland. 30 CFR 816.116(b)(2) requires crop production on the revegetated area to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. Paragraph (F)(4)(b) allows of bond for phase II to occur when species planted meet, at a minimum, the ground cover standards of paragraph (F)(3)(c). In order to meet the ground cover standards of paragraph (F)(3)(c), a forage planting would have to occur even in instances where the final vegetation will be row crops. Ohio has confirmed their intent to impose this requirement. This requirement differs from the Federal requirement but is effective. 30 CFR 800.40(c)(2) indicates that a phase II release can occur upon establishment of revegetation in accordance with the approved reclamation plan. Paragraph (F)(4)(c) indicates standards for a phase III release on cropland. The Federal rules at 30 CFR 800.40(c)(3) address phase III release and 30 CFR 816.116/817.116(c)(2) addresses success standards. 30 CFR 816.116/817.116(c)(2) has been suspended by OSMRE (51 FR 41962, November 20, 1986) since it permits revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period. 1501:13–9–15(F)(4)(c) requires yield data on crop harvest from the last two years of the responsibility period to equal or exceed the average county yield for comparable crops, so it is not affected by the suspension. 30 CFR 816.116/817.116(b)(2), as stated above, requires crop production to be equal to or exceed that of a reference area or other success standards approved by the regulatory authority. In 48 FR 40151, September 2, 1983 (preamble to OSMRE final rule at 30 CFR 816.116), OSMRE addresses comments concerning the use of county average yields. The language does not prohibit the use of a county yields. However, it does indicate that the standard must be representative of unmined lands in the area being reclaimed. A county-wide average is considered to be representative of all soils and not just soils on unmined areas.

Ohio's response accompanying the revisions to this amendment intended to correct this deficiency was as follows:

Items 34 and 35 refer to a discussion in the preamble to the federal regulations that requires that average county yields *by soil type* be used to evaluate the success of revegetation for nonprime farmland cropland. Ohio currently uses the Ohio Crop Reporting Service to obtain information on the average county yield for crops on nonprime farmland and cropland, a source which does not provide yield data by soil type by county, but which is the only available source of crop information for Ohio that is listed by county.

Ohio Agricultural Statistics, published by the Ohio Crop Reporting Service, lists average yields by crop by county, yields which are computed using a combination of the prime farmland and other classes of cropland in that county. The Division is not aware of any other agency that records Ohio crop yield information by soil type by county. Although OSMRE's letter contends that Ohio's nonprime farmland cropland success standard is not specific to types of soils in the permitted area, the Division fails to see how it can adopt a by soil type by county standard when such information is unavailable in Ohio.

The lack of information on yields by soil type is not justification for not requiring this information to be obtained. Ohio must revise its rules to limit the average county yield to the specific soil types existing on the area prior to mining, or clarify that the average county yields to be used for comparison are only representative of unmined lands. Therefore, the Director finds that OAC 1501:13–9–15(f)(4)(c) is less effective than the Federal rules and is disapproving it. He is also requiring Ohio to amend its program to be no less effective than the Federal provisions.

Paragraph (F)(5) addresses success standards on prime farmland. Under OAC 1501:13–9–15(F)(5)(e), Ohio indicates that the five-year period of extended responsibility shall begin, for row crops, in accordance with paragraph (F)(4)(b) and for hay crops in accordance with paragraph (F)(2)(b). It appears that the reference to paragraph (F)(4)(b) should actually be to paragraph (F)(4)(a) which addresses the start of the five-year period for cropland.

The Federal rules at 30 CFR 800.40(c)(2) indicate that no part of a bond shall be released ". . . until soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area." 30 CFR 823.15 addresses revegetation and soil productivity on prime farmlands. 30 CFR 823.15(b) requires measurement of soil productivity to begin within ten years and to be measured on a representative sample or on all of the reclaimed prime farmland. The measurement method must be a statistically valid sampling technique at a 90 percent or greater confidence level. Ohio has explained its measurement procedure in Division Advisory Memo No. 54 for yield verification on prime farmland and cropland. This procedure is currently being reviewed by the U.S. Soil Conservation Service. 30 CFR 823.15(b) (6) and (7) sets requirements for reference crops. This section requires reference crops to be selected from crops most commonly produced on surrounding prime farmland. Where row crops are used as the reference crop, the row crop requiring the greatest rooting depth must be used. OAC 1501:13–9–15(F)(5)(d) meets this requirement.

30 CFR 823.15(b)(3) requires a minimum measurement period of three years for determining average annual crop production prior to release of bond. Under OAC 1501:13–9–15(F)(5)(f) Ohio only requires one year of yield data showing that the crop harvest equals or exceeds the target yields specified to obtain a phase II release. Paragraph (F)(5)(g) requires two additional years of yield data to obtain a phase III release. This change was made on the December resubmission of this amendment and was accompanied by the following explanation:

The final item that Ohio would like to discuss concerns the success standards for prime farmland. In the May 16, 1986, version of program amendment number twenty-five, Ohio proposed that three years of yield data be required on prime farmland prior to a phase II bond release. Ohio made this proposal as a result of a recommendation from the Eastern Technical Center (ETC). This recommendation, which was later spelled out in an August 25, 1986, memorandum from Lewis M. McNay of the ETC to Nina Rose Hatfield, interpreted the requirements of 30 CFR 800.40(c)(2) and (c)(3), and 30 CFR 823.15(b)(3) as meaning that three years of yield data were required for a phase II release, and that no additional data was required for a phase III release. Ohio has carefully reviewed this recommendation, and believes that it does not accurately reflect the intent of the federal regulations. Ohio requests, therefore, that this matter be submitted to and reviewed by the Solicitor's Office of U.S. Department of the Interior. Ohio will await a written decision from the Solicitor's Office prior to making changes to its current proposed rule revision in this regard.

Since the December 1, 1986 submission, OSMRE has responded to an inquiry from the Ohio Mining and Reclamation Association addressing this same issue. The Director responded by letter dated February 2, 1987 to the Ohio Mining and Reclamation Association that three years of yield data is required for a phase II release on prime farmland. In response to Ohio's request, the Solicitor's Office has reviewed the matter and has concurred with OSMRE's previous findings. Therefore, Ohio must revise its rules so that at least three years of yield data are required to obtain a phase II release on prime farmland. The Director is also requiring that Ohio not approve release of phase II bond without the required three years of yield data. Ohio uses target yields specified in the Ohio Cooperative Extension Service Bulletin Number 685 as the basis to determine comparable yields on restored prime farmland. 30 CFR 823.15(b)(7) allows current yield records of representative local farms with the concurrence of the U.S. Soil Conservation Service. The Technical and Standard Specifications issued by the U.S. Soil Conservation Service approve of the use of Bulletin 685 for target yields. These specifications are incorporated by Ohio in Division Advisory Memorandum No. 1.

30 CFR 816.116/817.116(b)(4) requires vegetation on industrial or commercial and residential land uses to be no less than that necessary to control erosion, as does OAC 1501:13–9–15(F)(6). 30 CFR 800.40(c) (2) and (3) address phase releases. 30 CFR 816.116(b)(3) addresses requirements for vegetative success on areas developed as fish and wildlife habitat, recreation, shelter belts, or forest products. Stocking requirements are to be set by the regulatory authority with consultation with State agencies in forestry and wildlife. 30 CFR 816.116/817.116(b)(3)(ii) was suspended by OSMRE (51 FR 41962, November 20, 1986) insofar as it permits the counting of trees and shrubs which have been in place less than the applicable period of responsibility in determining revegetation success. This suspension was as a result of a U.S. District Court of the District of Columbia decision. Ohio's definition of "countable tree" under OAC 1501:13–9–15(A) requires the tree or shrub to be in place at least five years. The Ohio rule, therefore, is in accordance with the Court's findings. The Ohio standard for a phase II release is within those outlined in 30 CFR 800.40(c)(2). However, Ohio does not specify a method for determining that trees and shrubs are established as was one under OAC 1501:13–9–15(F)(3)(b) for herbaceous species. Ohio may want to consider criteria for determining establishment of woody species. 30 CFR 800.40(c)(2) does require that vegetation be established for a phase II release.

The Director finds, based upon the above discussions, that proposed amendments to OAC 1501:13–9–15 are no less effective than the Federal requirements in 30 CFR 800.40 and 30 CFR 816.116/817.116 with the following exceptions:

Ohio does not identify a statistically valid sampling technique for the evaluation of vegetation or justify its current method to show that it has a 90 percent confidence level. Therefore the Director is disapproving Ohio's method of evaluation of revegetation and requiring Ohio to revise its method to a statistically valid method.

Under OAC 1501:13–9–15(F)(4)(c), Ohio requires that, on crop land other than prime farmland, yield data from crop harvest during the last two years of the period of extended responsibility must meet or exceed the average county yield for comparable crops to obtain a phase III release. This requirement is less effective than 30 CFR 816.116/817.116(a)(2) since an average county yield is not specifically representative of unmined lands in the area being reclaimed. Therefore the Director is disapproving OAC 1501:13–9–15(F)(4)(2) and is requiring Ohio to submit information to clarify that the average county yields to be used are only representative of unmined lands or to revise its rules to limit the average county yield to specific soil types.

OAC 1501:13–9–15(F)(5)(f) is less effective than 30 CFR 800.40(c) (2) and (3) and 30 CFR 823.15(b)(3) in that it allows phase II bond release with less than three years of yield data to verify that prime farmland has been returned to equivalent levels of yield as non-mined prime farmland of the same soil type. Therefore, the Director is disapproving OAC 1501:13–9–15(F)(5)(f) and is requiring Ohio to revise its rules to require three years of yield data before releasing a phase II bond. Also Ohio is not to release phase II bonds without the required three years of yield data.

42. OAC 1501:13–10–01: Roads Performance Standards

This section addresses road classification systems, performance standards, and design and construction; road locations, maintenance, and reclamation; and primary roads. The proposed amendment is nearly identical to the Federal rules in 30 CFR 816.150/817.150 and 30 CFR 816.151/817.151. Although the Federal rules have been suspended (50 FR 7278, February 21, 1985) for inadequate notice and public comment, the Ohio rule does not suffer from this defect. The Director finds that OAC 1501:13–10–01 is no less stringent than Section 515(b)(17) of SMCRA.

43. OAC 1501:13–13–02: Auger Mining, Additional Performance Standards

Paragraphs (A), (B), (C), and (D) as proposed are nearly identical to 30 CFR 819.12, 819.13, 819.15, and 819.17. Paragraph (E) addresses the general requirements of 30 CFR 819.19(a) and references the backfilling and grading requirements of OAC 1501;13–9–14. Paragraph (F) closely resembles 30 CFR 819.21. Paragraph (G) is similar to 30 CFR 819.19(b) and incorporates remining requirements by reference. The Director finds that OAC 1501:13–13–02 is no less effective than the requirements of 30 CFR Part 819.

44. OAC 1501:13–13–03: Operations on Prime Farmland

Revisions to this section are mostly grammatical and nonsubstantive. Ohio has replace the term "A horizon" with "topsoil" and requires alternative material, if approved, to have greater productive capacity than that existing prior to mining. Paragraph (B) incorporates U.S. Soil Conservation Service Soil Reconstruction Specifications as required by 30 CFR 823.14. The Director finds that the amendments proposed to OAC 1501:13–13–03 are no less effective than 30 CFR Part 823.

45. OAC 1501:13–13–04: Mountaintop Removal Mining

Revisions to this section are grammatical and nonsubstantive. Other revisions clarify the rule and revise references. The Director finds the revisions are no less effective than the Federal rules in 30 CFR Part 824.

46. OAC 1501:13–13–05: Steep Slope Mining

Revisions to this section are nonsubstantive with the exception of a revision to paragraph (A)(2) which limits disturbance above the highwall. The Director finds that the revisions proposed are no less effective than the Federal rules in 30 CFR 816.107/817.107.

47. OAC 1501:13–13–06: Coal Preparation Plants and Support Facilities Not Located at or Near the Mine Site or Not Within the Permit Area For a Mine

Revisions to this section include grammatical and nonsubstantive changes. Paragraph (A) includes a requirement to obtain bond and to operate the facility in accordance with these rules. Revisions to this rule are very similar to the requirements of 30 CFR 827.12. The Director finds that the proposed revisions are no less effective than 30 CFR 827.17.

48. OAC 1501:13–14–01: Inspections

Paragraph (B) is revised to afford right-of-entry on lands where surface coal mining operations are believed to be taking place. Paragraph (E) adds inspection responsibility on exploration operations as are necessary to ensure compliance. Paragraph (G) is revised to give citizens the right to request an inspection if there is reason to believe that a violation exists (not only imminent danger violations.) Paragraph (H) is amended to require that a person alleged to be in violation be given copies of the results of informal reviews. Paragraph (K) revises the requirements on compliance reviews and conferences. The Federal rules in 30 CFR Part 840 address inspections by a state regulatory authority. The Director finds that the proposed amendments are no less effective than 30 CFR Part 840.

49. OAC 1501:13–14–02: Enforcement

This section is revised with grammatical and nonsubstantive changes among others. Paragraph (A) is amended to include language that mining without a permit is considered a condition or practice which causes or can reasonably be expected to cause imminent environmental harm with one exception and requires the issuance of a cessation order. Also added under paragraph (A) is a requirement that the Chief review all failure-to-abate cessation orders for patterns of violations as required under paragraph (D). The reference to paragraph (D) appears to be a typographical error which should reference paragraph (C). Paragraph (C) is substantially revised to address the requirements of show-cause orders and hearings. Paragraph (D) is revised to indicate that mailing of enforcement actions is to occur to the address listed in the permit. Paragraph (E) is amended to indicate that hearings concerning the cessation of mining are to be held in accordance with section 1513.13 of the Ohio Revised Code and the notice or order will not expire if the hearing is waived by the person it was issued to. Ohio has also submitted an interpretation of the paragraph by letter dated October 27, 1987, that unless the hearing is requested by the permittee it is deemed to be waived and a hearing will not be held. The Federal rules in 30 CFR Part 843 address enforcement procedures and 43 CFR 4.1190 through 4.1196 address show-cause proceedings. The Director finds the provisions and amendments to OAC 1501:13–14–02 no less effective than the Federal rules.

50. OAC 1501:13–14–03: Civil Penalties

Grammatical and nonsubstantive changes have been made throughout this section. Paragraph (C) is amended to describe negligence and good faith in more specific terms. Paragraph (D) adds language to indicate that penalties on failure-to-abate cessation orders are in addition to the penalty on the original violation. Paragraph (E) now requires the Chief to issue a proposed assessment within 30 days of the issuance of the notice or order and requires the recipient of the proposed assessment to be advised of the right to an informal conference. Paragraph (F) is new and sets requirements for informal assessment conferences. Paragraph (G) is substantially revised and sets out requirements for requesting a hearing with the Reclamation Board of Review concerning civil penalties. Paragraphs (H) and (I) are revised to address appeal of the Board's decision and final payment of penalties. The Federal rules under 30 CFR Part 845 address civil penalties and assessment conferences. The Director finds that amendments to OCA 1501:13–14–03 are no less effective than the Federal regulations.

51. OCA 1501:13–14–04: Petitions for Award of Costs and Expenses

This section is revised by deleting language concerning formal review by the Chief and now addresses only award of costs and expenses. All formal review is now directed to the Reclamation Board of Review. Appeal of a decision by the Chief concerning award of costs and expenses is to be directed to the Reclamation Board of Review. The Director finds that revisions to OAC 1501:13–4–04 are no less effective than the Federal rules in 43 CFR 4.1290 through 4.1296.

52. OAC 1501:13–14–05: Informal Conferences

This is a new section and addresses requirements for requesting and conducting informal conferences on the application for permits, revisions, or renewals of permits. The proposed rule is nearly identical to the Federal rule in 30 CFR 773.12(c). The Director finds that the proposed revision to OAC 1501:13–14–05 is no less effective than the Federal rule.

53. OAC 1513–3–03: Appearance and Practice Before the Board

This section is revised to prohibit *ex parte* contacts between representatives of the parties appearing before the Board and the Board. This rule has been subsequently revised under another program amendment submitted February 2, 1987 by the Reclamation Board of Review and is pending review by OSMRE. This Ohio rule addresses the Federal requirement found in 43 CFR 4.832. The Ohio amendment is similar to the Federal requirements. The Director finds the revision is no less effective than the Federal standard.

54. OAC 1513–3–08: Temporary Relief

This section is revised to indicate that temporary relief shall not be granted when the relief sought is the issuance of a permit which has been denied by the Chief. This rule has been resubmitted under another program amendment submitted February 2, 1987 by the Reclamation Board of Review. There is no Federal counterpart to this rule. The Director finds the revision no less stringent than SMCRA.

55. Ohio Revised Code 1513.16: Reclamation Standards

Paragraphs (H)(2) and (3) are being amended to delete language whereby requests for bond release are presumed approved if the Chief does not notify the operator within the prescribed period that reclamation is not approved. This change is proposed to eliminate a problem of improper bond releases occurring due to an untimely decision by the Chief. Section 519(c) of SMCRA states that no land shall be fully released until all reclamation requirements of the Act are fully met. The Director finds that the Ohio amendment will prevent inadvertent release of bond in accordance with SMCRA and is approving this amendment.

56. Ohio Revised Code 1513.18: Reclamation Forfeiture and Defaulted Areas Funds

Paragraph (F) is being revised to delete language which allowed reclamation on forfeited sites to be delayed until the Attorney General has completed efforts to recover additional monies. Section 515(b)(16) of SMCRA requires reclamation to proceed as contemporaneously as possible and Section 509 requires bond to be adequate for reclamation to be performed by the regulatory authority in case of forfeiture. Deletion of the language by Ohio strengthens the forfeiture process and shortens potential delays of reclamation. The Director finds that the amendment is no less stringent than the requirements of SMCRA.

IV. Public Comments

As discussed above, the Director solicited public comments and provided opportunity for a public hearing on the proposed amendments. There were no requests to testify at a public hearing and so no hearing was held. One letter of comment was received, but requested only that the record be held open for Ohio to submit a modified version of the amendment.

Pursuant to section 503(b) of SMCRA, 20 CFR 732.17(h)(10)(i), 30 CFR 884.14(a)(2) and 30 CFR 884.15, comments were also solicited from various Federal agencies with an actual or potential interest in the Ohio program. The Environmental Protection Agency concurred in the amendments. A summary of other comments received and the Director's response to them appears below.

The U.S. Soil Conservation Service (SCS) agreed with Ohio that incremental bonding be retained and that Ohio's method of reviewing the entire area for bond release was preferable to a statistically representative sample of the whole. They also commented that they agree with Ohio's use of average county yields for cropland target yields and suggested an alternative if county average was not acceptable. SCS agrees with Ohio that less than three years of yield data is needed for a phase II release on prime farmland and at least one year of yield data is needed for a phase III release. SCS recommends that ground cover be at least 75 percent and for cropland purposes yields should produce 90 percent of the estimated yields for a phase II release. They requested that OAC 1501:13–9–15 paragraph (5)(d) add a statement that "a list of recommended reference crops is currently available in the local SCS Field Office Technical Guide." SCS further commented that OAC 1501:13–9–15 only require the Chief to approve average crop yields for prime farmland without SCS concurrence. Further comments requested referencing SCS Standard and Specification for "Land Reconstruction, Currently Mined Prime Farmland" found in each SCS Field Office Technical Guide in OAC 1501:13–13–03.

The Director has noted these comments and makes the following response. Incremental bonding has been disallowed by a U.S. District Court decision. See Finding 22 for additional discussion. Ohio has not submitted adequate information to show that their method of evaluation of revegetation success is as effective as the Federal standard. See Finding 41 for further discussion. Ohio's use of average county yields as target yields on cropland does not reflect yields of unmined soils in the area. Ohio's justification of use of county yields is that no other information is available. SCS indicates that they would recommend use of the SCS Field Office Technical Guide for each soil type in that county. The Federal rules at 30 CFR 823.15(b)(3) and 800.42(c)(2) require three years of yield data to verify prime farmland restoration prior to bond release. See Finding 41 for additional discussion. In response to the ground cover and yield requirements for phase II release, 30 CFR 800.40(c)(2) only requires that vegetation be established. The Ohio rule at OAC 1501:13–9–15(F)(3)(b) addresses establishment. The recommendation to reference SCS Technical Guides in the rules has been considered but is not required by OSMRE rules. Please refer to the findings section for additional information on these areas.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Ohio on May 16, 1986, with additional materials submitted on December 1, 1986, with the exception of those provisions determined to be inconsistent with SMCRA, the Federal regulations, or court decisions concerning those regulations.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are amended to implement this decision. The final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is disapproving the following provisions of the proposed amendments and is requiring that Ohio submit amendments to address these provisions:

(1) As discussed in Finding 2, the definition of "cemetery", OAC 1501:13-1-02(M) in so far as it excludes private family burial grounds.

(2) As discussed in Finding 36, OAC 1501:13-9-09(E), insofar as it allows the certifying engineer to determine the levels of foundation investigation and laboratory testing, does not prohibit disposal of non-coal waste in a refuse pile or impoundment structure, nor does it prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area.

(3) As discussed in Finding 41, OAC 1501:13-9-15, insofar as it does not include, nor does the Ohio program include, a statistically valid sampling technique for the evaluation of revegetation and the current method has not been justified to show that it has the equivalent of a 90 percent confidence level or is no less effective than the Federal standard.

(4) As discussed in Finding 41, OAC 1501:13-9-15(F)(4)(c), insofar as it does not require yields on restored cropland, which is not prime farmland, to be restored to production levels of unmined lands in the area being reclaimed.

(5) As discussed in Finding 41, OAC 1501:13-9-15(F)(5)(f), insofar as it does not require at least three years of yield information on restored prime farmland showing that crop production equals or exceeds the specified target yields prior to a Phase II bond release. Ohio is not to approve phase II bond releases without at least three years of yield data as required.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

VI. Additional Determinations

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 OSMRE 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, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require 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 SMGRA and the Federal rules will be met by the State.

3. *Paper 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 935

Coal mining, Intergovernmental relations, Surface mining, Undergound mining.

Dated: July 7, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

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

2. 30 CFR 935.15 is amended by adding new paragraph (bb) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendments submitted to OSMRE on May 16, 1986, with additional materials subsequently submitted on December 1, 1986, are approved effective upon promulgation of the revised rules and enactment of the statutory revisions by the State provided the rules and statute adopted and enacted are identical to those submitted to OSMRE. Revisions to the Ohio Administrative Code in Chapter 1501: 13-1-01, 13-1-02, 13-1-10, 13-1-13, 13-3-03, 13-3-04, 13-3-05, 13-3-06, 13-3-07, 13-4-01, 13-4-02, 13-4-03, 13-4-04, 13-4-05, 13-4-06, 13-4-08, 13-4-12, 13-4-13, 13-4-14, 13-5-01, 13-6-03, 13-7-01, 13-7-02, 13-7-03, 13-7-04, 13-7-05, 13-7-06, 13-7-07, 13-7-08, 13-8-01, 13-9-01, 13-9-04, 13-9-06, 13-9-07, 13-9-08, 13-9-09, 13-9-10, 13-9-11, 13-9-13, 13-9-14, 13-9-15, 13-10-01, 13-13-02, 13-13-03, 13-13-04, 13-13-05, 13-13-06, 13-14-01, 13-14-02, 13-14-03, 13-14-04, 13-14-05, 1513-3-03, 1513-3-08. Revisions to Ohio Revised Code Chapter 1513.16 and 1513.18.

3. 30 CFR 935.12 is amended by adding new paragraph (c) as follows:

§ 935.12 State program provisions disapproved.

* * * * *

(c) OAC 1501:13-1-02(M) is not approved to the extent that it excludes private family burial plots from the definition of cemetery.

(1) OAC 1501:13-9-09 is not approved to the extent that it allows the certifying engineer to determine the levels of foundation investigation and laboratory testing, and does not prohibit disposal of non-coal waste in a refuse pile or impoundment structure, and does not prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area.

(2) OAC 1501:13-9-15(F)(4)(c) is not approved to the extent that it does not require yields on restored cropland, which is not prime farmland, to be restored to production levels representative of unmined lands in the area being reclaimed.

(3) OAC 1501:13-9-15(F)(5)(f) is not approved to the extent that it does not require at least three years of yield information on restored prime farmland showing that crop production equals or exceeds the specified target yields prior to a Phase II bond release. Ohio is not to approve phase II bond release on prime farmland without at least three years of yield information as required.

4. 30 CFR 935.16 is amended by adding new paragraphs (d), (e), (f), (g), and (h) as follows:

§ 935.16 Required program amendments.

* * * * *

(d) By October 15, 1987, Ohio shall amend its program at OAC 1501:13-1-02(M) to include private family burial plots under the definition of cemetery to be no less effective than 30 CFR 761.5.

(e) By October 15, 1987, Ohio shall amend its program at OAC 1501:13-9-09 to require foundation investigation and laboratory testing, to prohibit disposal of non-coal waste in a refuse pile or impoundment structure, and to prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area.

(f) By October 15, 1987, Ohio shall amend its program to include a statistically valid technique for the evaluation of revegetation to augment its current method to be as effective as the Federal rules at 30 CFR 816.116(a).

(g) By October 15, 1987, Ohio shall amend its program at OAC 1501:13-9-15(F)(4)(c) to require yield on restored cropland, which is not prime farmland, to be restored to production levels representative of unmined lands in the area being reclaimed to be no less effective than 30 CFR 816.116(a)(2).

(h) By October 15, 1987, Ohio shall amend its program at OAC 1501:13-9-15(F)(5)(f) to require at least three years of yield information on restored prime farmland showing that crop production equals or exceeds the specified target yields prior to a phase II bond release. In the interim, Ohio is not to approve release of phase II bond without at least three years of yield data as required.

[FR Doc. 87-16243 Filed 7-16-87; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Approval of Amendment to the Virginia Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). As permitted by recently revised Federal regulations, the amendments would restore the phrase "to the extent required under State law" to the regulations governing subsidence control plan requirements and subsidence protection with respect to structures and facilities.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13 and 946.15.

II. Submission of Amendment

By letter dated March 20, 1987 (Administrative Record No. VA-597), Virginia submitted a proposed amendment to sections 480-03-19.784.20(f)(2) and 480-03-19.817.121(c)(2) of its Coal Surface Mining Reclamation Regulations. Section 480-03-19.784.20(f)(2) requires that subsidence control plans for underground mines include a description of the measures to be taken to mitigate or remedy any subsidence-related material damage to structures or facilities. Section 480-03-19.817.121(c)(2) requires that the permittee of an underground mine either correct any material subsidence-caused damage to structures or facilities or compensate the owner of such structures or facilities for the full amount of any diminution in value resulting from subsidence. The amendment alters the damage correction provisions of both rules by restoring the phrase "to the extent required under State law", which, as codified at 30 CFR 946.12(b)(3), was disapproved in the rulemaking announcing the Director's decision on the revised set of Coal Surface Mining Reclamation Regulations submitted by Virginia by letter of November 8, 1985 (51 FR 42548-42555, November 25, 1986).

As explained in Finding 9 of the November 25, 1986 **Federal Register** notice (51 FR 42551), the Director disapproved this phrase because, on February 21, 1985, the Secretary suspended an identical phrase contained in the corresponding Federal regulations at 30 CFR 817.121(c)(2) to comply with the decision of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79-1144, October 1, 1984). The court remanded this provision, which specified that an operator need be responsible for subsidence damage to structures only to the extent required by State law, for failure to provide adequate notice and opportunity to comment in accordance with the Administrative Procedure Act.

On July 8, 1985, OSMRE reproposed 30 CFR 817.121(c)(2) as promulgated on July 1, 1983. In the same notice, OSMRE also requested comment on proposed revisions to 30 CFR 784.20. On February 17, 1987, after considering all public comments, OSMRE promulgated a revised version of 30 CFR 784.20 and repromulgated 30 CFR 817.121(c)(2) as it existed prior to the February 21, 1985 suspension notice (52 FR 4860-4868). Under these rules, operator responsibility for subsidence damage to structures or facilities will be determined by the applicable provisions of State law. Therefore, Virginia requested that the Director remove his disapproval of similar provisions in the Commonwealth's regulations.

The Director announced receipt of the proposed amendment in the April 22, 1987 **Federal Register** (52 FR 13252-13253) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. The comment period closed on May 22, 1987; a summary of the comments received and their disposition appears in the section of this notice entitled "Public