

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by OPR.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personnel privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL-096-FOR]

Illinois Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposes revisions to and additions of regulations concerning definitions, hydrologic and subsidence control plan permit application requirements for underground mining operations, and hydrologic balance protection and subsidence control performance standards for underground mining operations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Illinois program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., e.s.t., January 11, 1999. If requested, we will hold a public hearing on the amendment on January 4, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on December 28, 1998.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director,
Indianapolis Field Office, Office of
Surface Mining, Minton-Capehart
Federal Building, 575 North
Pennsylvania Street, Room 301,

Indianapolis, Indiana 46204, Telephone: (317) 226-6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois 62701-1787, Telephone (217) 782-4970.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226-6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

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

II. Description of the Proposed Amendment

By letter dated November 24, 1998 (Administrative Record No. IL-5028), Illinois sent us an amendment to its program under SMCRA. Illinois sent the amendment in response to our letter dated May 20, 1996 (Administrative Record No. IL-1900), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at Illinois' own initiative. Illinois proposes to amend its regulations at Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for your inspection at the locations listed above under "ADDRESSES."

1. 62 IAC 1701. Appendix A Definition of Drinking, Domestic or Residential Water Supply

Illinois proposes to add the following definition for "drinking, domestic or residential water supply":

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

2. 62 IAC 1701. Appendix A Definition of Material Damage

Illinois proposes the following definition for "material damage":

'Material damage,' in the context of Sections 1784.20 and 1817.121 of this Part, means:

Any functional impairment of surface lands, features, structures or facilities;

Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

3. 62 IAC 1701. Appendix A Definition of Replacement of Water Supply

Illinois proposes to define "replacement of water supply" as follows:

'Replacement of water supply' means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

Upon agreement by the operator and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. In conjunction with this requirement, the applicant shall provide a plan for determining an appropriate present worth amount and describe how to resolve disputes between the land owner and the applicant over this amount.

If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

4. 62 IAC 1784.14 Hydrologic Information

At 62 IAC 1784.14(e)(3)(D), Illinois proposes to require that the determination of the probable hydrologic consequences include the following finding:

Whether the underground mining activities conducted after January 19, 1996 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

5. 62 IAC 1784.20 Subsidence Control Plan

Illinois is removing the existing language and proposing to add the following provisions at 62 IAC 1784.20:

a. Section 1784.20(a)(1) requires the pre-subsidence survey to include a map of the permit, shadow and adjacent areas at a scale of 1:12,000 or larger if determined necessary. The map must show the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence. It must also show the location and type of drinking, domestic and residential water supplies that could be contaminated, diminished or interrupted by subsidence.

b. Section 1784.20(a)(2) requires the pre-subsidence survey to include a narrative addressing the potential impacts of subsidence on the protected structures or renewable resource lands and protected water supplies.

c. Section 1784.20(a)(3) requires the pre-subsidence survey to include identification of the premining condition of all protected structures and facilities within the area of the applicable angle of draw and a survey of the quantity and quality of all protected water supplies. Section 1784.20(a)(3) also requires that if the applicant cannot make this survey because the owner will not allow access to the site, the applicant must notify the owner, in writing, of the effect that denial of access will have as described in Section 1817.121(c)(3)(C). The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of the protected structures and facilities and the protected water supplies. Copies of the survey and any technical assessment or engineering evaluation must be provided to the property owner. The survey of structures and facilities must be maintained at the mine office and provided upon request. The survey of water must be provided to the Illinois Department of Natural Resources, Office of Mines and Minerals (Department).

d. At section 1784.20(b), if the survey shows that no protected structures, renewable resource lands, or water supplies would be impacted as a result of mine subsidence, and if the Department agrees, no further information need be provided. If the survey shows that structures, renewable resource lands or water supplies exist and that subsidence could impact them, the application must include a subsidence control plan.

e. Section 1784.20(b)(1) requires the subsidence control plan to contain a description of the method of coal removal.

f. Section 1784.20(b)(2) requires a map of the underground workings that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where measures will be taken to prevent or minimize subsidence and subsidence-related damage and, when applicable, to correct subsidence-related material damage.

g. Section 1784.20(b)(3) requires the pre-subsidence survey to include a description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying and underlying strata.

h. Section 1784.20(b)(4) requires a description of the monitoring, if any, needed to determine the commencement and degree of subsidence.

i. For those areas where planned subsidence is not projected, section 1784.20(b)(5) requires the subsidence control plan to include a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage. A list of possible measures to be taken is contained in subsection (b)(5) (A) through (E).

j. Section 1784.20(b)(6) requires the subsidence control plan to include a description of the anticipated effects of planned subsidence, if any.

k. For those areas where planned subsidence is projected to be used, section 1784.20(b)(7) requires the subsidence control plan to include a description of methods to be employed to minimize damage to structures and facilities; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair.

l. Section 1784.20(b)(8) requires the subsidence control plan to include a description of the measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures. The applicant must provide a description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface and structures potentially impacted and the impact on water quality or quantity. The applicant must also provide a plan for resolving

disputes between the landowner and the operator over the amount, level or degree of damage.

m. Section 1784.20(b)(9) requires other information specified by the Department.

6. 62 IAC 1817.41 Hydrologic Balance Protection

Illinois proposes to add the following new provision at 62 IAC 1817.41(j):

Drinking, domestic or residential water supply. The operator must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after January 19, 1996, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in Sections 1780.21 and 1784.14 of this Part and the geologic information concerning baseline hydrologic conditions required in Sections 1781.21 and 1784.22 of this Part will be used to determine the impact of mining activities upon the water supply.

7. 62 IAC 1817.121 Subsidence Control

Illinois proposes the following revisions to 62 IAC 1817.121:

a. At section 1817.121(a), Illinois added the heading "Measures to prevent or minimize damage"; numbered the existing language in the first sentence as subsection (a)(1); and removed the last sentence.

b. At new subsection (a)(2), if an operator employs mining technology that provides for planned subsidence, Illinois requires the operator to take necessary and prudent measures to minimize material damage to the extent technologically and economically feasible to structures and facilities. Measures to minimize material damage are not required if the operator has the written consent of the owners; or unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair. Written consent or cost analysis must be provided to the Department 60 days prior to performing planned subsidence operations under a structure or prior to extraction occurring within 1000 feet of a protected structure. A lesser time period or distance may be employed if approved in writing.

c. Section 1817.121(a)(3) provides that nothing in this Part prohibits the standard method of room-and-pillar mining.

d. At section 1817.121(c), Illinois added the heading "Repair of damage."

e. At subsection (c)(1), Illinois added the heading "Repair of damage to surface lands."

f. At subsection (c)(2), Illinois added the heading "Repair or compensation for damage to structures and facilities." Illinois also revised subsection (c)(2) to require the operator to promptly repair or compensate the owner for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. If the repair option is selected, the operator must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the operator must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The operator may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. These requirements apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983.

g. At section 1817.121(c)(3), Illinois added the heading "Rebuttable presumption of causation by subsidence" and removed the existing language.

h. New subsection (c)(3)(A) requires that if damage to any structure or facility occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the operator caused the damage. The presumption will apply to a 30-degree angle of draw.

i. At new subsection (c)(3)(B), Illinois allows an operator to request that the presumption apply to a different angle of draw. The Department may approve application of the presumption to a site-specific angle of draw based on a site-specific analysis submitted by the applicant. To establish a site-specific angle of draw, an operator must demonstrate that the proposed angle of draw has a more reasonable basis than the standard. It must be based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

j. Subsection (c)(3)(C) provides that if the operator was denied access to the land or property for the purpose of conducting the pre-subsidence survey, no rebuttable presumption will exist.

k. At subsection (c)(3)(D), Illinois provides some examples of a rebuttal of presumption. The presumption will be rebutted if the evidence establishes that the damage predated the mining in question; the damage was proximately caused by some other factor or factors;

or the damage occurred outside the surface areas within which subsidence was actually caused by the mining in question.

l. Subsection (c)(3)(E) provides that all relevant and reasonably available information will be considered by the Department in any determination of whether damage to protected structures was caused by subsidence from underground mining.

m. New subsection (c)(4) provides requirements for adjustment of the performance bond amount when subsidence-related material damage to protected land, structures or facilities occur or when contamination, diminution, or interruption to a water supply occurs. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. This time frame may be extended, but not to exceed one year, if the operator demonstrates that subsidence is not complete, that not all probable subsidence-related material damage has occurred, or that not all reasonable anticipated changes have occurred. The operator may also use appropriate terms and conditions for liability insurance to assure that the financial responsibility to comply with subsection (c) is in place.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Illinois program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on December 28, 1998. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION**

CONTACT. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare responses and appropriate questions. The public hearing will continue until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1998.

Charles Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-077-FOR]

West Virginia Permanent Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on part of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted on April 28, 1997 (with revisions submitted on May 14, 1997) and amends both the West Virginia Surface Mining Reclamation Regulations and the West Virginia Surface Mining Code. The comment period is being reopened specifically on an amendment to allow fish and wildlife habitat and recreation lands as a postmining land use for mountaintop removal operations. The amendment is intended to improve the effectiveness of the West Virginia program.

DATES: Written comments must be received on or before 4:00 p.m. on January 15, 1999.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the West Virginia program, the program amendment, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed changes by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301
Telephone: (304) 347-7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143,
Telephone: (304) 759-0515.

In addition, copies of the amendment that is the subject of this notice are available for inspection during regular