This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(a)(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.

[FR Doc. 98-32866 Filed 12-9-98; 8:45 am]
'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 of construction or income.

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 obligations 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 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 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.
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 to surface lands.”

e. At subsection (c)(1), Illinois added the heading “Repair or compensation for damage to structures and facilities.”

f. At subsection (c)(2), 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 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.

I. 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 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.
and 732 have been met.

whether the submittal is consistent with
SMCRA and its implementing Federal
regulations and whether the other
sections 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)).

This rule does not contain
information collection requirements that
require approval by OMB under the
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.).


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.

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.

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

ADDRESS: 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±7430.

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

Public Meeting

If only one person requests an
opportunity to speak at a hearing, a
public meeting, rather than a public
hearing, will 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 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
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requirements of 30 CFR Parts 730, 731,
and 732 have been met.

68221

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
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