

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.545 is amended by revising the headings of paragraphs (a)(15), (a)(15)(i), and (a)(15)(ii) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) \* \* \*

(15) Topical otic drug products—(i) For the prevention of swimmer's ear and for the drying of water-clogged ears, approved as of May 7, 1991.

(ii) For the prevention of swimmer's ear, approved as of August 15, 1995.

\* \* \* \* \*

PART 344—TOPICAL OTIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 344 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

4. Section 344.3 is amended by adding paragraphs (c) and (d) to read as follows:

§ 344.3 Definitions.

\* \* \* \* \*

(c) Water-clogged ears. The retention of water in the external ear canal, thereby causing discomfort and a sensation of fullness or hearing impairment.

(d) Ear drying aid. A drug used in the external ear canal to help dry water-clogged ears.

5. Section 344.10 is amended by revising the section heading to read as follows:

§ 344.10 Earwax removal aid active ingredient.

\* \* \* \* \*

6. Section 344.12 is added to subpart B to read as follows:

§ 344.12 Ear drying aid active ingredient.

The active ingredient of the product consists of isopropyl alcohol 95 percent in an anhydrous glycerin 5 percent base.

7. Section 344.50 is amended by revising the section heading and by removing paragraph (e) to read as follows:

§ 344.50 Labeling of earwax removal drug products.

\* \* \* \* \*

8. Section 344.52 is added to subpart C to read as follows:

§ 344.52 Labeling of ear drying aid drug products.

(a) Statement of identity. The labeling of the product contains the established name of the drug, if any, and identifies the product as an "ear drying aid."

(b) Indications. The labeling of the product states, under the heading "Use," the following: "dries water in the ears" (optional, which may be followed by: "and relieves water-clogged ears") (which may be followed by any or all of the following: "after: [bullet]<sup>1</sup> swimming [bullet] showering [bullet] bathing [bullet] washing the hair"). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in paragraph (b) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) Warnings. The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Flammable [in bold type]: Keep away from fire or flame."

(2) "Do not use [in bold type] in the eyes."

(3) "Ask a doctor before use if you have [in bold type] [bullet] ear drainage or discharge [bullet] pain, irritation, or rash in the ear [bullet] had ear surgery [bullet] dizziness."

(4) "Stop use and ask a doctor if [in bold type] irritation (too much burning) or pain occurs."

(d) Directions. The labeling of the product contains the following statement under the heading "Directions": [optional, bullet] "apply 4 to 5 drops in each affected ear."

Dated: August 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL-097-FOR]

Illinois Regulatory Program

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

ACTION: Proposed rule; withdrawal of a previously proposed amendment and public comment period and opportunity for public hearing for a new proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing the withdrawal of a previously proposed amendment and the receipt of a new amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois is replacing its previously proposed amendment dated November 24, 1998, with a new amendment dated August 2, 1999. Both amendments include changes to Illinois' regulations to reflect changes required by the Energy Policy Act of 1992 regarding repair or compensation for material damage caused by subsidence from underground coal mining operations and replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations. The new amendment also includes revisions to and additions of regulations concerning performance bond adjustment; siltation structures; impoundments; hydrologic balance; disposal of noncoal mine wastes; revegetation; backfilling and grading; prime farmland; and State inspections. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

This document gives the times and locations that the Illinois program and the new 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 we will follow for the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., e.s.t., September 16, 1999. If requested, we will hold a public hearing on the amendment on September 13, 1999. We will accept

<sup>1</sup> See § 201.66(b)(4) of this chapter.

requests to speak at the hearing until 4:00 p.m., e.s.t. on September 1, 1999.

**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, IN 46204, Telephone:  
(317) 226-6700.

Illinois Department of Natural  
Resources, Office of Mines and  
Minerals, Land Reclamation Division,  
300 W. Jefferson Street, Suite 300,  
Springfield, IL 62701, 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. Withdrawal of Proposed Amendment**

By letter dated November 24, 1998 (Administrative Record No. IL-5028), Illinois sent us an amendment to its program under SMCRA. Illinois proposed to amend its regulations concerning repair or compensation for material damage caused by subsidence from underground coal mining operations and replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations. We announced receipt of the proposed amendment in the December 10, 1998, **Federal Register** (63 FR 68218) and invited public comment on its

adequacy. The public comment period ended January 11, 1999. During our review of the amendment, we identified issues concerning Illinois' policy for implementing the proposed regulations. Illinois' implementation policy appeared to contain requirements and exemptions that were not specified in the regulation language. We met with Illinois on February 22, 1999, to discuss our findings. On April 1, 1999, we notified Illinois of additional concerns (Administrative Record No. IL-5042). On August 2, 1999, Illinois sent us a new amendment that responds to our concerns and reflects the April 27, 1999, decision by the U.S. Court of Appeals for the District of Columbia Circuit regarding the March 31, 1995, Federal regulations relating to subsidence (National Mining Ass'n v. Babbitt, 98-5320, D.C. Cir. 1999). The new amendment replaces Illinois' amendment dated November 24, 1998. Therefore, we are withdrawing the proposed amendment announced in the December 10, 1998, **Federal Register**.

### **III. Description of the Proposed Amendment**

By letter dated August 2, 1999 (Administrative Record No. IL-5044), the Illinois Department of Natural Resources (Department) sent us a new amendment to the Illinois program under SMCRA. The Department sent the amendment in response to our letters dated May 20, 1996, June 17, 1997, and January 15, 1999 (Administrative Record Nos. IL-1900, IL-2000, and IL-5036, respectively), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at the Department's own initiative. The Department proposes to amend Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by the Department. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

#### **A. Subsidence Repair or Compensation and Water Replacement**

On March 31, 1995, OSM promulgated rules to implement new section 720 of SMCRA. Section 720, which took effect on October 24, 1992, as part of the Energy Policy Act of 1992, Public Law 102-486, 206 Stat. 2776, requires all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage caused by subsidence to noncommercial buildings and occupied residential dwellings and related structures. It also requires the replacement of drinking, domestic, and residential water supplies that have

been adversely impacted by underground coal mining operations conducted after that date. By letter dated May 20, 1996, under 30 CFR 732.17(c), we notified Illinois to amend its program to be no less effective than the changes which resulted from the enactment of section 720 of SMCRA and the promulgation of implementing Federal regulations on March 31, 1995 (Administrative Record No. IL-1900). In response to this notification, Illinois proposed the following changes to its regulations:

#### **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 62 Ill. Adm. Code 1784.20 and 62 Ill. Adm. Code 1817.121 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 permittee 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 operator and the water supply owner.

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—Underground Mining Permit Applications

a. Illinois revised subsection (b)(1) by adding the word “shadow.” This subsection now requires the permit application to contain the location and ownership for the permit, shadow and adjacent area of existing wells, springs, and other ground water resources, seasonal quality and quantity of ground water and water usage.

b. Illinois revised subsection (b)(1)(A)(i) by adding the phrase “for the permit area and its adjacent area.” For the permit area and its adjacent area, the revised subsection requires that ground water quality descriptions include pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese, and chlorides.

c. Illinois added new subsection (b)(1)(A)(ii) to require that ground water quality descriptions include, at a minimum:

for the shadow area and its adjacent area, pH, total dissolved solids, total iron and total manganese. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored.

d. Illinois revised subsection (b)(1)(B) by adding the phrase “for the permit, shadow and adjacent areas.” The revised subsection requires ground water quantity descriptions for the permit, shadow and adjacent areas to include, at a minimum, rates of discharge or usage and elevation of the potentiometric surface in the coal to be mined. It also requires this information for each water bearing stratum above the coal to be mined and in each water bearing stratum which may be potentially impacted below the coal to be mined.

e. Illinois added the following new provision at subsection (e)(3)(D) 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, shadow or adjacent areas.

#### 5. 62 IAC 1784.20 Subsidence Control Plan—Underground Mining Permit Applications

a. Illinois removed the introductory paragraph of 62 IAC 1784.20 and added its substantive provisions to subsections (a) and (b).

b. Subsection (a) is entitled “Pre-subsidence survey.” Subsection (a)(1) requires the permit application 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, depth and type of drinking, domestic and residential water supplies that could be contaminated, diminished or interrupted by subsidence.

c. Subsection (a)(2) requires the permit application to include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

d. Subsection (b) contains the requirements for a subsidence control plan. If the Department agrees, the applicant does not have to provide further information if the survey shows that: (1) No structures or protected water supplies or renewable resource lands exist; or (2) no material damage or diminution in value or reasonably foreseeable use of such structures or lands exist and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence. The application must include a subsidence control plan if the survey shows that structures, renewable resource lands or water supplies exist and that: (1) Subsidence could cause material damage or diminution in value or reasonably foreseeable use of structures; or (2) contamination, diminution, or interruption of protected water supplies; or (3) if the Department determines that damage, diminution in value or foreseeable use or contamination, diminution, or interruption could occur.

e. Existing subsection (a) was recodified as subsection (b)(1) and the reference to “other extraction methods” was removed.

f. Existing subsection (b) was recodified as subsection (b)(2) and revised to require the map of underground workings to identify all areas where measures described in subsections (b)(4), (b)(5) and (b)(7) will be taken to prevent or minimize subsidence and subsidence-related damage and, when applicable, to correct subsidence-related material damage.

g. Existing subsection (c) was recodified as subsection (b)(3) and revised to require 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. It also requires a description of geotechnical stability parameters that affect the likelihood or extent of subsidence and subsidence related damage or potential underground mining impacts on ground water supplies.

h. Existing subsection (d)(5) was recodified as subsection (b)(4) and revised to require a description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 62 Ill. Adm. Code 1817.121(c).

i. Existing subsection (d) was recodified as subsection (b)(5). It requires a detailed description of the subsidence control measures for those areas where planned subsidence is not projected to be used. Existing subsections (d) (1) through (3) were recodified as subsections (b)(5) (A) through (C) without change. Existing subsection (d)(4) was recodified as subsection (b)(5)(D) and revised to require the description of the subsidence control measures to include those measures to be taken on the surface to prevent or minimize material damage or diminution in value of the surface. New subsection (b)(5)(E) requires a description of the geotechnical and engineering analysis of the mining geology and geometry, percent extraction, and historic performance to substantiate a stable subsidence control plan.

j. Existing subsection (e) was recodified as subsection (b)(6) without change.

k. Existing subsection (f) was removed.

l. New subsection (b)(7) was added for those areas where unplanned subsidence is projected to be used. It requires the subsidence control plan to

include a description of procedures to determine the quantity and quality of drinking, domestic and residential water supplies in accordance with 62 Ill. Adm. Code 1817.121(a)(2), if impacts could reasonably be expected to cause material damage. The applicant may request an exemption from conducting surveys of protected water supplies if the applicant can demonstrate that material damage resulting from underground mining is not likely to occur. The demonstration must be based on site specific geotechnical information, stability design, and historical performance provided in subsections (b)(3) and (b)(5).

m. For those areas where planned subsidence is projected to be used, new subsection (b)(8)(A) requires the subsidence control plan to include a description of the methods to be used to minimize damage from planned subsidence 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. New subsection (b)(8)(B) requires a description of procedures to determine the condition of structures and facilities and the quantity and quality of drinking, domestic and residential water supplies, if impacts could reasonably be expected to cause material damage. If the applicant can demonstrate that material damage resulting from underground mining is not likely to occur, the applicant may request an exemption from conducting structure condition surveys and/or surveys of drinking, domestic and residential water supplies required by 62 Ill. Adm. Code 1817.121(a)(2). The demonstration must be based on site specific geotechnical information, stability design and historical performance provided under subsections (b)(3) and (b)(6).

n. New subsection (b)(9) requires a description of the measures to be taken in accordance with 62 Ill. Adm. Code 1817.41(j) and 1817.121(c) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures. At subsection (b)(9)(A) the applicant must provide procedures to determine the existence and degree of material damage or diminution of value or foreseeable use of the surface, structures and facilities, or water quality and quantity. The procedures must address resolution of disputes between the landowner and the permittee over the existence,

amount, level or degree of damage, such as third party arbitration. At subsection (b)(9)(B), the applicant must provide a plan for determining an appropriate present worth amount and describe how to resolve disputes between the landowner and the applicant over this amount, such as third party arbitration.

o. Existing subsection (g) was recodified as subsection (b)(10) with only editorial changes.

#### 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 permittee 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 62 Ill. Adm. Code 1780.21 and 1784.14 and the geologic information concerning baseline hydrologic conditions required in 62 Ill. Adm. Code 1780.22 and 1784.22 will be used to determine the impact of mining activities upon the water supply.

#### 7. 62 IAC 1817.121 Subsidence Control

Illinois changed the word "operator" to "permittee" throughout this section and proposed the following changes:

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. New subsection (a)(2) requires that based on the requirements of 62 Ill. Adm. Code 1784.20(b)(7) and (b)(8), the permittee must perform a survey of the condition of all structures and facilities that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence. The permittee must also perform a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area, subsidence shadow area, and adjacent area that could be contaminated, diminished, or interrupted by subsidence. The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such structures and facilities and the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or

engineering evaluation to the property owner.

c. Subsection (a)(2)(A) requires the permittee to perform or schedule the condition survey of structures and facilities a minimum of 120 days prior to undermining. A lesser time may be approved by the Department if justified by the permittee in writing. The permittee must provide a copy of the condition survey to the property owner and maintain a copy that must be provided to the Department upon request. The permittee must provide the Department with verification that the survey has been completed and forwarded to the property owner.

d. Subsection (a)(2)(B) requires the permittee to complete the survey of drinking, domestic and residential water supplies 120 days prior to the water delivery system being undermined. A lesser time may be approved by the Department if justified by the permittee in writing. The permittee must provide a copy of the water survey to the property owner and to the Department.

e. At new subsection (a)(3), if a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to structures and facilities. Measures to minimize material damage are not required: (1) If the permittee has the written consent of the owners of the structures and facilities; or (2) unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

f. Subsection (a)(4) provides that nothing in this Part prohibits the standard method of room-and-pillar mining.

g. The substantive language of subsection (b) was not changed.

h. At subsection (c), Illinois added the heading "Repair of damage."

i. At subsection (c)(1), Illinois added the heading "Repair of damage to surface lands" and made minor language changes.

j. 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 permittee 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 permittee must fully

rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee 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.

k. Existing subsection (c)(3) was removed. New subsection (c)(3) provides requirements for adjustment of the performance bond amount when subsidence-related material damage to protected land, structures or facilities occurred or when contamination, diminution, or interruption to a water supply occurs. The Department must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owners, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply. The additional performance bond must remain in force until the repair, compensation, or replacement is completed. 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 permittee demonstrates that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonable anticipated changes have occurred affecting protected water supplies. The permittee may also use appropriate terms and conditions for liability insurance to assure that the financial responsibility to comply with subsection (c) is in place.

l. Illinois removed the last sentence of subsection (g).

#### 8. Policy and Justification for Subsidence Repair and Water Replacement Regulations

The amendment includes a letter and a side-by-side comparison of the proposed subsidence-related regulations and the counterpart Federal regulations to supplement Illinois changes concerning subsidence repair and water replacement. The letter discusses:

(1) What operations must perform pre-mining structure condition surveys.

Applicable changes: 62 IAC 1784.20 (a)(1), (b)(3), (b)(5)(E), (b)(8) and 1817.121 (a)(2) and (a)(2)(A);

(2) What operations must perform pre-mining water quality and quantity surveys.

Applicable changes: 62 IAC 1784.20 (a)(1), (b)(3), (b)(5)(E), (b)(7), (b)(8) and 1817.121 (a)(2) and (a)(2)(B);

(3) When should specific water surveys be required. Applicable changes: 62 IAC 1784.14 (b)(1), (e)(3)(D), 1784.20 (a)(1), (b)(7), (b)(8), (b)(9) and 1817.121 (a)(2) and (a)(2)(B);

(4) Where are condition surveys to be kept. Applicable change: 62 IAC 1817.121(a)(2)(A);

(5) Where is water quality and quantity survey information to be kept. Applicable change: 62 IAC 1817.121(a)(2)(B).

(6) How will compensation for water replacement costs be managed. Applicable change: 62 IAC 1784.20(b)(8)(B).

#### B. Siltation Structures, Impoundments, Banks, Dams, and Embankments

By letters dated June 17, 1997, and January 15, 1999, under 30 CFR 732.17(c), we notified Illinois that changes to the Illinois regulations relating to siltation structures, impoundments, banks, dams, and embankments were needed to be no less effective than the changes that were made to the Federal regulations on October 20, 1994 (59 FR 53022). In the October 20, 1994, rulemaking, OSM included standards from the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985) as part of the Federal requirements for siltation structures and impoundments. These changes were made as the result of decisions by the U.S. District Court of the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C. July 15, 1985) and *In Re: NWF v. Lujan*, No. 88-3345 (D.D.C. August 30, 1990). In response to this notification, Illinois proposed the following changes to its regulations:

1. 62 IAC 1780.25 (Surface Mining) and 1784.16 (Underground Mining) Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments

a. Illinois removed all references to sedimentation ponds and added references to siltation structures. Illinois also revised all outdated citation references.

b. Illinois added the following new language at the beginning of subsections (a)(2):

Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section

for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA).

c. Illinois revised the introductory language of subsections (a)(3) to read as follows:

Each detailed design plan for a structure not included in subsection (a)(2) above shall:

d. Illinois revised subsections (f) to require that each plan under subsections (b), (c), and (e) include a stability analysis if the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a).

2. 62 IAC 1816.46 (Surface Mining Operations) and 1817.46 (Underground Mining Operations) Hydrologic Balance: Siltation Structures

Illinois removed the existing language from subsections (c)(2) and added the new language shown below. The only difference between the surface mining language and the underground mining language is a citation reference. We placed the citation reference for underground mining operations in brackets.

Spillways. A sediment pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in section 1816.49(a)(9) [1817.49(a)(9)] of this Part.

3. 62 IAC 1816.49 (Surface Mining Operations) and 1817.49 (Underground Mining Operations) Impoundments

a. Illinois added new subsections (a)(1) to read as follows:

Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," 1985 shall comply with "Minimum Emergency Spillway Hydrology Criteria" table in TR-60 and the requirements of this section.

b. Illinois redesignated existing subsections (a)(1) through (a)(11) as (a)(2) through (a)(12). Illinois also revised outdated citation references and changed the term "operator" to the term "permittee" throughout these sections.

c. Illinois revised redesignated subsections (a)(4)(A) to read as follows:

An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

d. Illinois revised redesignated subsections (a)(4)(B) by removing the language "Impoundments meeting the size or other criteria of 30 CFR 77.216(a)" and adding the language

"Impoundments included in subsection (a)(4)(A) above."

e. Illinois added the following new sentence to redesignated subsections (a)(5):

Impoundments meeting the SCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrology criteria in the "Minimum Emergency Spillway Hydrology Criteria" table in TR-60.

f. Illinois revised redesignated subsections (a)(6)(A) to require that impoundments meeting the Class B or C criteria for dams in TR-60 meet the same requirements that are specified in these subsections for impoundments meeting the size or other criteria of 30 CFR 77.216(a).

g. Illinois revised redesigned subsections (a)(10)(A) to require that impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) be inspected, examined and certified in accordance with 30 CFR 77.216.

h. Illinois revised redesigned subsections (a)(11) to require that impoundments that do not meet the SCS Class B or C criteria for dams in TR-60 or that are not subject to 30 CFR 77.216(a) must be examined at least quarterly for appearances of instability, structural weakness, or other hazardous conditions. The permittee must designate a qualified person to do the quarterly examinations.

i. Illinois revised subsections (b)(9)(A) by also requiring that permanent impoundments not meeting the Class B or C criteria for dams in TR-60 be provided with a spillway that meets the requirements specified in these subsections for those not meeting the size or other qualifying criteria of 30 CFR 77.216(a).

j. Illinois added new subsections (b)(9)(C) to read as follows:

Permanent impoundments meeting the Class B or C criteria for dams in TR-60, shall be provided with a spillway that meets the criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

k. Illinois revised subsections (c)(1) by also requiring that temporary impoundments not meeting the Class B or C criteria for dams in TR-60 be provided with a spillway that meets the requirements specified in these subsections for those not meeting the size or other qualifying criteria of 30 CFR 77.216(a). Illinois also added the following new provision at the end of subsections (c)(1):

Temporary impoundments meeting the Class B or C criteria for dams in TR-60, shall

be provided with a spillway that meets the criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

l. Illinois revised subsections (c)(2)(B)(i) to require that temporary impoundments meeting the SCS Class B or C criteria for dams in TR-60 be designed to control the same precipitation event specified for impoundments meeting the size or other criteria of 30 CFR 77.216(a).

m. Illinois revised subsections (c)(2)(B)(ii) by replacing the language "meeting the size or other criteria of 30 CFR 77.216(a)" with the language "included in subsection (c)(2)(B)(i) above."

#### C. Performance Bonds

##### 1. Administrative Review of Bond Adjustment Determinations

Illinois is revising its regulations for bond adjustment and administrative review as a result of Court Case No. 99-MR-214, Sangamon County, Illinois. The court found that the Department's rules lacked a mechanism for administrative hearing in the case of bond adjustments. The court ruled that this was in violation of the Illinois Administrative Procedure Act and enjoined the Department from increasing performance bond under its current regulations.

##### a. 62 IAC 1800.15 Adjustment of Performance Bond

Illinois revised subsection (b) to provide the permittee an opportunity for administrative review under 62 Ill. Adm. Code 1847.3 of any proposed adjustment to the performance bond amount.

##### b. 62 IAC 1847.3 Permit Hearings.

Illinois revised subsection (a) to provide that the hearing procedures outlined in 62 IAC 1847.3 also apply to review of bond adjustment determinations under 62 Ill. Adm. Code 1800.15.

##### 2. 62 IAC 1800.40 Requirement to Release Performance Bonds

a. Illinois revised subsection (a)(1) to allow permittees to authorize a person to act on their behalf in filing an application for bond release and to allow the Department to initiate an application for bond release.

b. In subsections (a)(2) and (3), the term "operator" is changed to "applicant."

c. In subsection (b)(2), Illinois removed a reference to the term "county." Illinois also added a requirement that the municipality in which the surface coal mining operation

is located be notified by certified mail of the Department's final administrative decision to release or not to release all or part of the performance bond.

#### D. 62 IAC 1816.89 (Surface Mining Operations) and 1817.89 (Underground Mining Operations) Disposal of Noncoal Mine Wastes

At subsections (b), Illinois is requiring that areas reclaimed to cropland capability have a minimum of four feet of suitable soil cover.

#### E. 62 IAC 1817.101 (Underground Mining Operations)—Backfilling and Grading: General Requirements

Illinois revised subsection (a) to require that surface areas disturbed incident to underground mining activities be backfilled and graded not later than 12 months after cessation of active use as determined by the Department.

#### F. Revegetation

##### 1. 62 IAC 1816.111 (Surface Mining Operations) and 1817.111 (Underground Mining Operations) Revegetation: General Requirements

a. Illinois revised outdated citation references in 62 IAC 1816.111(b)(5).

b. At 62 IAC 1816.111(d) and 1817.111(d), Illinois removed the requirement that those prime farmlands granted an exemption in accordance with 62 Ill. Adm. Code 1785.17(a)(5) meet the requirements of 62 Ill. Adm. Code 1823.15.

##### 2. 62 IAC 1816.116 (Surface Mining Operations) and 1817.116 (Underground Mining Operations) Success of Revegetation.

Illinois added a provision at subsections (b)(2) that require the person who conducts mining activities to:

Initiate a soil compaction and fertility testing plan, subject to the approval of the Department, for areas which have incurred five unsuccessful attempts to meet the production required by subsections (a)(3)(C) or (E) above or 62 Ill. Adm. Code 1785.15, or shall initiate deep tillage on the areas.

Illinois redesignated existing subsections (b)(2) as subsections (b)(3).

#### G. 62 IAC 1823.14 Prime Farmland: Soil Replacement

Illinois revised subsection (d) by adding the following new requirement:

In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the permittee shall engage in deep tillage or other appropriate means to restore premining capabilities.

*H. 62 IAC 1840.11 Inspections by the Department*

Illinois revised subsection (f)(2) by adding the language "or the Department has determined that the reclamation required for Phase II bond release has been completed" at the end of the existing language. This will allow a surface coal mining and reclamation operation that meets the new criteria to be designated inactive for inspection purposes.

*I. Miscellaneous Changes*

Throughout the sections discussed above, Illinois corrected typographical errors, punctuation, citation references, and other editorial-type errors; made minor wording changes; and simplified its use of numbers. To reflect recodification of the Illinois Surface Mining Land Conservation and Reclamation Act that occurred in 1992, Illinois replaced its citation references for the "Ill. Rev. Stat. 1989, ch. 96½, pars. 7901.01 *et seq.*" with references to "225 ILCS 720." Illinois also made some of the same types of corrections and changes in 62 IAC 1777.11, 1800.13, 1840.14, and 1846.18.

**IV. 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*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

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.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IL-097-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226-6700.

*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 September 1, 1999. 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 adequate responses and appropriate questions. The public hearing will continue on the specified date 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.

**V. 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: August 10, 1999.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 99-21258 Filed 8-16-99; 8:45 am]

BILLING CODE 4310-05-P

**POSTAL SERVICE****39 CFR Part 111****Standards Governing the Design of Curbside Mailboxes**

**AGENCY:** Postal Service.

**ACTION:** Notice of intent to establish a Consensus Committee and notice of first meeting.

**SUMMARY:** The Postal Service intends to establish a Consensus Committee to develop recommendations for revision of USPS STD 7A, which governs the design of curbside mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including mailbox manufacturers, mailbox accessory manufacturers, and postal customers. The purpose of this Notice is to apprise the public of the intent to establish the committee; provide the public with information regarding the committee and the issues to be addressed; solicit public comment on the proposal to establish the committee, the issues to be addressed, and the proposed membership and procedures of the committee; explain how persons may apply or nominate others for membership on the committee; and announce the tentative date of the first committee meeting.

**DATES:** The Postal Service must receive written comments, requests for representation or membership on the committee, and nominations for membership on the committee no later than September 14, 1999. The first committee meeting is tentatively scheduled for September 15 and 16, 1999.

**ADDRESSES:** The first committee meeting is tentatively scheduled to be held at

U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC 20260. Mail comments and all other communications regarding the committee to Annamarie Gildea, Room 7142, at the same address. Committee documents will be available for public inspection and copying between 9:00 a.m. and 4:00 p.m. weekdays at the address above.

**FOR FURTHER INFORMATION CONTACT:** Annamarie Gildea, (202) 268-3558.

**SUPPLEMENTARY INFORMATION:****I. Background**

U.S. Postal Service Standard, Mailboxes, City and Rural Curbside, USPS STD 7A, governs the design of curbside mailboxes. The current standard, adopted in 1992, prescribes design limitations in terms that are no longer consistent with the operational requirements of the Postal Service. Primary issues to be addressed by the committee will include increasing design flexibility within the Postal Service's operational requirements; simplification and clarification of the standard; revising provisions on secure mailboxes; and adding provisions on accessories and electronic technologies. The committee may also consider other issues at its discretion and within the scope set forth in paragraph II.

**II. Scope of the Rule**

The contents of the new standard will be limited to regulations on curbside mailbox and accessory design characteristics that affect the operations of the Postal Service. Other issues, including but not limited to design characteristics relating to roadside safety, are not within the scope of the new standard.

**III. Consensus Process**

In a consensus process, representatives of interests that would be substantially affected by the new rule meet as an advisory committee to negotiate among themselves and with the agency to reach a consensus on a proposed rule. As part of the consensus process, the agency agrees to use the committee's recommendation as the basis of the proposed rule, and each private interest agrees to support the committee's recommendation and the proposed rule to the extent that it reflects the recommendation.

A feasibility study, performed by a neutral convener, and using the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* as a guide, recommended that the Postal Service initiate a consensus process. In reaching this recommendation, the convener determined that: (1) There is a need for

the rule; (2) there are a limited number of identifiable interests significantly impacted by the rule; (3) a committee can be created with balanced representation which can represent the identified interests and can negotiate in good faith; (4) consensus on the issues appears likely; (5) the consensus process will not unduly delay the issuance of the rule; (6) the agency has resources and is willing to assist the consensus process; and (7) the agency, within the constraints of the law, will use the advisory committee's consensus as the basis of the rule for notice and comment.

**IV. Participants**

The committee will include a representative from the Postal Service and representatives, to be selected by the Postal Service, from persons and/or organizations that will be significantly affected by this rule. Each representative may also name an alternate who may attend all committee meetings and will serve in place of the primary representative if necessary. The designated Postal Service representative will be authorized to represent the agency in the committee, and will participate in its activities, discussions, and deliberations.

The convener has recommended that the Postal Service invite the following organizations to participate in the consensus process. The convener has contacted these organizations, which have indicated their willingness to serve on the committee. The Postal Service proposes to invite the following organizations to participate in the consensus process:

1. At Ease Technologies, Inc.
2. Cutler Manufacturing Corporation
3. Imperial Mail Box Systems, Inc.
4. Janzer Corporation
5. Magazine Publishers of America
6. National Association of Homebuilders
7. Parcel Shippers Association
8. Steel City Corporation
9. Step 2 Corporation
10. Rubbermaid, Inc.
11. The Solar Group

It is expected that these organizations would represent the following interests:

-Mailbox manufacturers

—Larger general manufacturers  
Steel City Corporation  
The Solar Group

—Specialty manufacturers—metal  
Cutler Manufacturing Corporation  
Imperial Mail Box Systems, Inc.  
Janzer Corporation

—Specialty manufacturers—non-metal  
Step 2 Corporation  
Rubbermaid, Inc.