

Dated: August 2, 2001.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 913

[SPATS No. IL-100-FOR]

#### Illinois Regulatory Program

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposes revisions to and additions of statutory provisions concerning lands eligible for remining, the Illinois Interagency Committee on Surface Mining Control and Reclamation, lands unsuitable petitions, and rulemaking procedures. Illinois intends to revise its program to be consistent with SMCRA and to clarify ambiguities.

This document gives the times and locations that the Illinois program and the proposed 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 p.m., e.s.t., September 14, 2001. If requested, we will hold a public hearing on the amendment on September 10, 2001. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on August 30, 2001.

**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: IFOMAIL@osmre.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*" and "rules and regulations consistent with regulations issued by the Secretary" pursuant to the Act. 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. 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 June 28, 2001 (Administrative Record No. IL-5068), Illinois sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). The proposed amendment consists of changes made to the Illinois Surface Coal Mining Land Conservation and Reclamation Act at 225 ILCS 720. The statutory changes were enacted through Public Act 90-0490 and became effective on August 17, 1997. Illinois sent the amendment at its own

initiative. Below is a summary of the changes proposed by Illinois.

##### A. 225 ILCS 720/1.03 Definitions

Public Act 90-0490 amended subsection (a) by adding the following definition of "lands eligible for remining":

(9-a) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under the Abandoned Mined Lands and Water Reclamation Act.

##### B. 225 ILCS 720/1.04 Advisory Council on Reclamation

1. Public Act 90-0490 revised subsection (a) by adding the language "or his or her designee" at the end of the first sentence. The revised sentence reads as follows:

(a) There is created the Surface Mining Advisory Council to consist of 9 members, plus the Director or his or her designee.

2. Public Act 90-0490 revised the first sentence of subsection (c) by adding the language "Office of Mines and Minerals within the". The revised sentence reads as follows:

(c) The Council shall act solely as an advisory body to the Director and to the Land Reclamation Division of the Office of Mines and Minerals within the Department.

##### C. 225 ILCS 720/1.05 Interagency Committee

Public Act 90-0490 amended Section 1.05 by adding a provision that abolished the Interagency Committee on Surface Mining Control and Reclamation. The provision reads as follows:

The Interagency Committee on Surface Mining Control and Reclamation shall be abolished on June 30, 1997. Beginning July 1, 1997, all programmatic functions formerly performed by the Interagency Committee on Surface Mining Control and Reclamation shall be performed by the Office of Mines and Minerals within the Department of Natural Resources, except as otherwise provided by Section 9.04 of this Act.

##### D. 225 ILCS 720/2.08 Standards for Approval of Permits and Revisions

Public Act 90-0490 added new subsection (e) concerning lands eligible for remining. This new subsection reads as follows:

(e) After the effective date of this amendatory Act of 1997, the prohibition of subsection (d) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection:

(1) "unanticipated event or condition" means an event or condition encountered in a remining operation that was not

contemplated in the applicable surface coal mining and reclamation permit; and

(2) "violation" has the same meaning as such term has under subsection (d).

#### *E. 225 ILCS 720/6.07 Forfeiture*

Public Act 90-0490 added new subsection (f) concerning lands eligible for remining. This new subsection reads as follows:

(f) In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds appropriated for expenditure under the Abandoned Mined Lands and Water Reclamation Act may be used if the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement.

#### *F. 225 ILCS 720/6.08 Release of Bonds*

Public Act 90-0490 added new subsection (i) concerning lands eligible for remining. This new subsection reads as follows:

(i) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for reclamation and restoration under the Abandoned Mined Lands and Water Reclamation Act after the release of the bond or deposit for any such operation under this Section.

#### *G. 225 ILCS 720/7.03 Procedure for Designation*

Public Act 90-0490 amended subsection (b) by adding the language "unless the petition is rejected by the Department as incomplete, frivolous, or submitted by a person lacking an interest which is or may be adversely affected by surface coal mining operations" to the end of the subsection. The revised subsection reads as follows:

(b) Immediately after a petition under this Section is received, the Department shall prepare a land report in accordance with Section 7.04, unless the petition is rejected by the Department as incomplete, frivolous, or submitted by a person lacking an interest which is or may be adversely affected by surface coal mining operations.

#### *H. 225 ILCS 720/7.04 Land Report*

Public Act 90-0490 amended the third sentence of subsection (a) to clarify that each Land Report shall contain a detailed statement on the potential coal resources of the area by adding the word "coal" between the words "potential" and "resources." It also amended the last sentence of subsection (a) by adding a reference to Section 7.03, procedure for designation.

#### *I. 225 ILCS 720/9.01 Rules*

Public Act 90-0490 amended Section 9.01 by deleting existing subsections (c) through (g) and the first sentence of subsection (h). The balance of subsection (h) was redesignated as

subsection (c) and subsection (i) was redesignated as subsection (d). Existing subsections (c) and (d) contain procedures for public notice of and comment on a rule-making proceeding. Existing subsections (e) through (g) contain agency procedures for adoption of rules. The first sentence of existing subsection (h) contains information on when an adopted rule is effective.

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed 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:* If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

*Electronic Comments:* Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. IL-100-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.

*Availability of Comments:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Indianapolis Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection in their entirety.

*Public Hearing:* If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on August 30, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. 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.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*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 proposed amendment, you may 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 will also make a written summary of each meeting a part of the Administrative Record.

### **IV. Procedural Determinations**

#### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

#### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

#### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse

effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

#### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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 because each 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 proposed State regulatory programs and program amendments submitted by the States 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.

#### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 counterpart 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. Accordingly, this rule will ensure that existing requirements previously promulgated 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 counterpart Federal regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### **List of Subjects in 30 CFR Part 913**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 2001.

**Charles E. 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 917**

**[KY–229–FOR]**

#### **Kentucky 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 a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment consists of revisions to the Kentucky regulations pertaining to subsidence control. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4 p.m., [E.D.T.], August 30, 2001.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Field Office Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400, E-Mail: [bkovacic@osmre.gov](mailto:bkovacic@osmre.gov)  
Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, Lexington