

- Should this claim be limited to single-serving containers, or is it appropriate on multi-serving packages? Explain why or why not.

- If claims are permitted on multi-serving packages, should these claims be limited to products that have portioned pieces, such as cookies or slices of bread, or should they be allowed on products that are not portion controlled, such as pies or bulk sodas? For example, might this claim be extended to "bulk" products such as pizza suggesting that if you cut a smaller slice, you will get a caloric savings?

- What comparative terms are appropriate? Because "reduced" has always been used to signal some type of reformulation (i.e., special processing, alteration, formulation, or reformulation to lower the nutrient content), is it appropriate to use the term "reduced" on products that have not been so altered? Is "less than," which has been used more broadly to signal differences in nutrient levels derived through a variety of means, a more appropriate term?

- Currently all comparative calorie claims are limited to reductions of at least 25 percent. Should these comparisons (e.g., reduced or fewer calories) continue to be limited to reductions of at least 25 percent, and if not, what justification is there that a smaller reduction of calories would be meaningful and significant? Please provide data.

- What other requirements may be necessary to ensure that the claim is not confusing or misleading to consumers?

- If manufacturers are permitted to make such label comparisons of different portion sizes of food, what is the likely change in the distribution of package sizes that will become available to consumers?

- What other labeling changes, if any, would encourage a broader range of package sizes?

### III. Future Analysis of Benefits and Costs

If the agency proposes regulatory changes based on the initiatives outlined in this ANPRM, we will estimate the costs of labeling changes and other potential costs (such as the costs of reformulating products) should the regulations create incentives for new products. The comments on this ANPRM may identify other costs as well. The benefits of the regulatory options depend on how consumers respond to the changes in label serving sizes or package sizes. We will use the information from comments to help determine ways to estimate the possible consumer responses to various changes.

The comments will also contribute to our estimates of the effects of regulatory options on small entities.

### IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Report of the Working Group on Obesity, "Calories Count" (Internet address: <http://www.cfsan.fda.gov/~dms/owg-toc.html>), March 12, 2004.

2. Food and Drug Administration, Center for Food Safety and Applied Nutrition, "2002 Health and Diet Survey—Preliminary Topline Frequencies (Weighted)," March 2004.

3. U.S. Department of Health and Human Services, National Institutes of Health, National Heart, Lung, and Blood Institute, "Portion Distortion! Do You Know How Food Portions Have Changed in 20 Years?" (Internet address: <http://hin.nhlbi.nih.gov/portion/index.htm>).

4. Young, L. R. and M. Nestle, "Expanding Portion Sizes in the U.S. Marketplace: Implications for Nutrition Counseling," *Journal of the American Dietetic Association*, Vol. 103, No. 2, pp. 231–234, February 2003.

5. Smiciklas-Wright, H., D. C. Mitchell, S. J. Mickle, J. D. Goldman, A. Cook, "Foods Commonly Eaten in the United States, 1989–1991 and 1994–1996, Are Portion Sizes Changing?" *Journal of the American Dietetic Association*, Vol. 103, No. 1, pp. 41–47, January 2003.

6. Nielsen, S. J. and B. M. Popkin, "Patterns and Trends in Food Portion Sizes, 1977–1998," *Journal of the American Medical Association*, Vol. 289, No. 4, pp. 450–453, January 22/29, 2003.

7. U.S. Department of Health and Human Services, National Center for Health Statistics, NHANES 1999–2000 Data Files (Internet address: [http://www.cdc.gov/nchs/about/major/nhanes/NHANES99\\_00.htm](http://www.cdc.gov/nchs/about/major/nhanes/NHANES99_00.htm)) and NHANES 2001–2002 Data Files (Internet address: <http://www.cdc.gov/nchs/about/major/nhanes/nhanes01-02.htm>).

### V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–6644 Filed 4–1–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 913

[Docket No. IL–103–FOR]

#### Illinois Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are 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 to revise its regulations about revegetation success standards, to update statutory citations, to correct regulatory citations, and to clarify language in various provisions. Illinois intends to revise its program to clarify ambiguities and to improve operational efficiency.

This document gives the times and locations that the Illinois program and 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:** We will accept written comments on this amendment until 4 p.m., e.s.t., May 4, 2005. If requested, we will hold a public hearing on the amendment on April 29, 2005. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on April 19, 2005.

**ADDRESSES:** You may submit comments, identified by Docket No. IL–103–FOR, by any of the following methods:

- E-mail: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov). Include Docket No. IL–103–FOR in the subject line of the message.

- Mail/Hand Delivery: Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204

- Fax: (317) 226-6182
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to review copies of the Illinois program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address 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 Area Office.

Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226-6700, E-mail: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

In addition, you may review a copy of the amendment during regular business hours at the following location: Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, One Natural Resources Way, Springfield, Illinois 62701, Telephone: (217) 782-4970.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office. Telephone: (317) 226-6700. E-mail: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Illinois Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### **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 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 this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 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 of the Illinois program in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, 913.16, and 913.17.

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

By letter dated February 1, 2005 (Administrative Record No. IL-5088), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Illinois sent the amendment at its own initiative. Illinois is proposing to amend its regulations at 62 Illinois Administrative Code (IAC) Parts 1816, 1817, and 1823. Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

##### *A. 62 IAC 1816.116 Revegetation Success Standards*

Illinois proposes to amend its regulations at 62 IAC 1816.116 to (1) incorporate a new productivity alternative to the Agricultural Lands Productivity Formula (ALPF), for determining success of revegetation of cropland, pasture land, hayland, and/or grazing land; (2) to update references to and requirements in existing regulations concerning the new productivity alternative; (3) to update requirements pertaining to adjustment for abnormal, catastrophic, growing conditions when the ALPF or the new productivity alternative is used for determining success of revegetation, (4) to remove references to oats as a crop that may be used to prove productivity success; (5) to update information in the soil master file, county average yield file, the agricultural lands productivity formula sampling methods, and Exhibit A in the ALPF, and (6) to delete Tables A through D from the ALPF.

1. *62 IAC 1816.116(a)(3)(C) and (E)*. At subsections (a)(3)(C) and (E), Illinois proposes to add a reference to new subsection (a)(6) and to add the following requirement at the end of each of the subsections:

Once chosen by the permittee, the productivity alternative in subsection (a)(6) may not be modified without approval from the Department.

2. *62 IAC 1816.116(a)(4)*. At subsection (a)(4), Illinois proposes to

reference the new productivity alternative in subsection (a)(6); to update requirements pertaining to adjustment for abnormal, catastrophic, growing conditions when the ALPF or the new productivity alternative is used for determining success of revegetation; and to remove a reference to oat crops from several provisions.

a. In the introductory paragraph of subsection (a)(4), Illinois proposes to add a reference to the new productivity alternative at subsection (a)(6).

b. Illinois proposes to change the requirements of subsection (a)(4)(C) concerning adjustments for abnormal growing conditions to read as follows:

(C) Adjustments for abnormal growing conditions shall be accepted by the Department if such adjustments are certified by a qualified professional (American Society of Agronomy certified) or National Association of State Departments of Agriculture crop enumerators used under this Section, whose ability to perform such adjustments has been previously approved by the Department.

c. At subsection (a)(4)(D), Illinois proposes to remove a reference to "oats" as a type of crop commonly grown on surrounding unmined cropland and as a crop that may be used for one year to demonstrate productivity on prime farmland and other cropland areas. Illinois also proposes to add the following requirement concerning deep tillage of prime farmland and other cropland areas:

If deep tillage has been completed to a minimum depth of 36 inches prior to bond release, the applicant may use more than one successful year of hay or wheat as a crop to be used for the productivity demonstration. The requirement for one successful year of corn remains unchanged under this provision.

3. *62 IAC 1816.116(a)(6)*. Illinois proposes a new productivity alternative at new subsection (a)(6). It reads as follows:

(6) In order to use the alternative to the Agricultural Lands Productivity Formula, Appendix A, to determine success of revegetation, the following shall apply: use of this alternative is contingent that the permittee can demonstrate for the entire field that the soil strength of the entire soil profile will average <= 200 psi or has been deep tilled to a minimum depth of 36 inches prior to bond release, and soil fertility will average Optimum Management for pH, P and K values as defined under the current Illinois Agronomy Handbook, and intensive land leveling is implemented, as needed, for the entire field. Areas to be tested are allowed under the provisions of subsections (a)(4)(B) or (C).

(A) The following substitution of Column F—Appendix A—County Average Yield File shall read:

Column F is a derived optimum management production (Figure) obtained by multiplying the figures in Column D times the figures in Column E. This production figure will normally exceed actual production because the optimum level management yield is used. The purpose of using the optimum management production is to derive a weighted average optimum management yield which is the total optimum management production (Column F) divided by the total grain acres in the county (Column D). The weighted optimum management yield figure will be used to derive a "factor" as described below:

Factor = Average of Official County Crop Yield for the Five Previous Years / Average of Weighted Optimum Management Yield for the Five Years

(B) When the above "factor" and hand sampling is used, the harvest loss will be calculated by averaging the harvest loss of the five previous years for the crop being tested.

4. *62 IAC 1816. Appendix A—ALPF.* Illinois proposes to update information in the soil master file, county cropped acreage file, county average yield file, the agricultural lands productivity formula sampling methods, and Exhibit A in the ALPF and to delete Tables A through D from the ALPF.

a. *Citation Corrections.* In the soil master file and the county cropped acreage file, Illinois is changing a citation reference to the Illinois Department of Agriculture from "20 [Illinois Compiled Statutes] ILCS 205/40.38" to "20 ILCS 205-115."

b. *Soil Master File.* Illinois proposes to revise the introductory paragraph by changing the word "high" to the word "optimum" in its reference to the "high level of management yields" and by adding the following sentence at the end of the paragraph:

The reference document for information contained in the soil master file shall be Bulletin 811, "Optimum Crop Productivity Ratings for Illinois Soil," University of Illinois, College of Agricultural, Consumer and Environmental Sciences, Office of Research, August 2002.

Illinois also proposes to remove the information on additional components of the soil master file.

c. *County Average Yield File.* In the fifth paragraph, Illinois proposes to remove its reference to "oats" as a grain crop. In the seventh paragraph, Illinois proposes to change the word "high" to the word "optimum" in the phrase "high management yield." In the eighth paragraph, Illinois proposes to change the word "high" to the word "optimum" in the phrase "high management yield" and to add the following new information:

If official county crop yields are unavailable for a specific crop in a given

year, the Department, in consultation with the permittee, and with the concurrence of the Illinois Department of Agriculture, will substitute a county crop yield from an adjacent county with similar soils, if it can be determined that similar weather conditions occurred in that year.

d. *Agricultural Lands Productivity Formula Sampling Methods.* In the introductory paragraph, Illinois proposes to remove its reference to "oats" as a grain crop. Illinois proposes to revise Step 10 under the section heading "Corn Sampling Technique" by removing the existing information on the row factor and replacing this information with "average row width in feet  $\times$  15 feet of row  $\div$  43560 square feet/acre." Illinois also proposes to remove the sections "Oats Sampling Technique (Rows <8)" and "Oats Sampling Technique (Discernible Rows)" from the ALPF.

e. *Exhibit A, County Crop Yields by Soil Mapping Unit.* Illinois proposes to change the word "high" to the word "optimum" in columns E and F and to remove a reference to oats.

f. Illinois proposes to delete tables A through D from the ALPF.

#### B. *62 IAC Part 1817 Permanent Program Performance Standards—Underground Mining Operations*

Illinois proposes to update statutory citations, to correct regulation references, and to add clarifying language to several regulations.

1. *62 IAC 1817.42 Hydrologic Balance-Water Quality Standards and Effluent Limitations.* Illinois proposes to change the statutory citation for the Illinois Environmental Protection Act from "(Ill. Rev. Stat. 1991, ch. 111 $\frac{1}{2}$ , pars. 1001 *et seq.*)" to "[415 ILCS 5]."

2. *62 IAC 1817.43 Diversions:*

a. At subsection (a)(2)(D) Illinois proposes to change the statutory citation for the Illinois Rivers, Lakes, and Streams Act from "(Ill. Rev. Stat. 1991, ch. 19, pars. 52-79)" to "[615 ILCS 5]."

b. At subsections (b) and (c), Illinois is proposing to simplify its use of numbers.

3. *62 IAC 1817.116 Revegetation Success Standards:*

a. At subsections (a)(3)(C) and (E), Illinois proposes to add a reference to the newly proposed productivity alternative at 62 IAC 1816.116(a)(6) and to add the following requirement at the end of each subsection:

Once chosen by the permittee, the productivity alternative in subsection (a)(6) may not be modified without approval from the Department.

b. At subsection (a)(4), Illinois proposes to add a reference to the newly proposed productivity alternative at 62 IAC 1816.116(a)(6).

c. At subsection (b)(2), Illinois proposes to correct a regulation citation reference by changing it from "62 IAC 1785.15" to "62 IAC 1823.15."

4. *62 IAC 1817.121 Subsidence Control:*

a. At subsection (c), Repair of Damage, Illinois proposes to add the following new introductory paragraph:

The requirements of this subsection apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983, except as noted in Section 1817.41(j).

b. At subsection (c)(2), Illinois proposes to remove the last sentence.

#### C. *62 IAC Part 1823.15 Prime Farmland-Revegetation*

a. At subsection (b)(2), Illinois proposes to add a reference to the newly proposed productivity alternative under 62 IAC 1816.116(a)(6).

b. At subsection (b)(3), Illinois proposes to add a reference to the newly proposed productivity alternative under 62 IAC 1816.116(a)(6), to simplify its use of numbers, and to add the following new requirement:

Once chosen by the permittee, the productivity alternative in subsection (a)(6) may not be modified without approval from the Department.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your 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 State program.

#### Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Indianapolis Area Office may not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: Docket No. IL-103-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 Area Office at (317) 226-6700.

#### *Availability of 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.

#### *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 April 19, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be 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 everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please 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 make a written summary of each meeting a part of the administrative record.

#### **IV. Procedural Determinations**

##### *Executive Order 12630—Takings*

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

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

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

##### *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 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 the Federal regulations at 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 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 pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Illinois program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Illinois program has no effect on Federally-recognized Indian tribes.

##### *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*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed 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 certifies 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. 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; and (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 an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 1, 2005.

**Charles E. Sandberg,**

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

[FR Doc. 05-6601 Filed 4-1-05; 8:45 am]

**BILLING CODE 4310-05-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 51**

[E-Docket ID No. OAR-2003-0079, FRL-7895-3]

RIN 2060-AJ99

**Nonattainment Major New Source Review Implementation Under 8-Hour Ozone National Ambient Air Quality Standard: Reconsideration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of public hearing.

**SUMMARY:** The EPA is requesting comment on issues raised in a petition for reconsideration of EPA's rule to implement the 8-hour ozone national ambient air quality standard (NAAQS or 8-hour standard). On April 30, 2004, EPA took final action on key elements of the program to implement the 8-hour standard. In that final action, we (the EPA) addressed certain implementation issues related to the 8-hour standard, including aspects of implementation of the nonattainment major New Source Review (NSR) program mandated by part D of title I of the Act (CAA or Act).

Following this action, on June 29, 2004 and September 24, 2004, three different parties each filed a petition for reconsideration concerning implementation of the 8-hour standard, including both major NSR and other issues. By letter dated September 23, 2004, EPA granted reconsideration of three issues raised in the petition for reconsideration filed by Earthjustice on behalf of several environmental organizations. On February 3, 2005, we published a proposed rule providing additional information and soliciting comment on two of the issues on which we granted reconsideration. Today, we provide additional information and seek comment on the third issue, which relates to two aspects of the major NSR provisions in the April 30, 2004 final rules. Specifically, we request comment on whether we should interpret the Act to require areas to retain major NSR requirements that apply to certain 1-hour ozone nonattainment areas in implementing the 8-hour standard, and whether EPA properly concludes that a State's request to remove 1-hour major NSR programs from its State Implementation Plan (SIP) will not interfere with any applicable requirement within the meaning of Section 110(l) of the Act.

**DATES:** *Comments.* Comments must be received on or before May 4, 2005.

*Public Hearing.* The public hearing will convene at 9 a.m. and will end at 5 p.m. on April 18, 2005. All individuals who have registered to speak before the date of the public hearing will be given an opportunity to speak. Because of the need to resolve the issues raised in this in a timely manner, EPA will not grant requests for extension of the public comment period. For additional information on the public hearing and requesting to speak, see the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. OAR-2003-0079, by one of the following methods to the docket. If possible, also send a copy of your comments to Ms. Lynn Hutchinson by either mail or e-mail as identified in the **FOR FURTHER INFORMATION CONTACT** section.

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: [A-and-R-Docket@EPA.gov](mailto:A-and-R-Docket@EPA.gov). Attention E-Docket No. OAR-2003-0079.

4. Fax: The fax number of the Air Docket is (202) 566-1741. Attention E-Docket No. OAR-2003-0079.

5. Mail: Air Docket, Environmental Protection Agency, Attention E-Docket No. OAR-2003-0079, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

6. Hand Delivery: Air Docket, Attention E-Docket No. OAR-2003-0079, Room B-102, Environmental Protection Agency West, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions.* Direct your comments to Docket ID No. OAR-2003-0079. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any