ILLINOIS DEPARTMENT OF MINES AND MINERALS

Richard R. Shockley
Director

LAND RECLAMATION DIVISION
300 WEST JEFFERSON STREET - SUITE 300
P.O. BOX 10197
SPRINGFIELD, ILLINOIS 62791-0197
TELEPHONE: (217) 782-4970

LAND RECLAMATION DIVISION MEMORANDUM NO. 91-2

TO: Recipients of Illinois Permanent Program Rules and Regulations

FROM: Paul J. Ehret, Supervisor
Land Reclamation Division

DATE: February 6, 1991

RE: Proposed Amendments to 62 Ill. Adm. Code 1700 - 1850
& Mailing List Update

Enclosed is a copy of the Department's proposed rulemaking as published in the Illinois Register on February 1, 1991. The proposed rulemaking is designed to make Illinois' rules consistent with the federal rules and to enhance clarity. Individuals wishing to comment on these proposed rules must follow the instruction provided on the notice page preceding each Section of the proposed rules. All comments must be received by the Department no later than Friday, March 22, 1991.

A public hearing on these proposed rules will be held on Tuesday, March 5, 1991, at 1:00 P.M. in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

The Department is again reviewing and updating the mailing list for coal surface mine rules and regulations.

If you or your organization wish to remain on the mailing list, please complete the attached form and return it to this office by March 1, 1991. If we do not receive a completed form from you, your name will be removed from our mailing list for the receipt of proposed and final rulemaking.

RETURN TO: Illinois Department of Mines and Minerals
Land Reclamation Division
P.O. Box 10197
Springfield, IL 62791-0197

I WISH TO REMAIN ON THE LAND RECLAMATION DIVISION REGULATION MAILING LIST.

Name _____

Organization _____

Address _____

_____

Signature _____

Date _____

GEORGE H. RYAN
Secretary of State

VOLUME 15
ISSUE 5

A WEEKLY PUBLICATION

FEBRUARY 1
1991

Pages 1203-1582

Secretary of State
Administrative Code Div.
288 Centennial Bldg.
Springfield, IL 62756

(217) 782-9786

ILLINOIS REGISTER

Rules of Governmental Agencies

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INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. Rulemaking activity consists of proposed or adopted new rules or amendments to or repealers of existing rules, including those by emergency or peremptory action.

The *Register* also contains Executive Orders and Proclamations issued by the Governor, notices of public information required by State statute, and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies. In addition, the *Register* contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current *Register* volume and a Sections Affected Index listing, by Title of the *Illinois Administrative Code*, each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume. Both indices are action coded and are designed to aid the public in monitoring rules.

The *Register* will serve as the update to the *Illinois Administrative Code*, a compilation of the rules of State agencies. The most recent edition of the *Code* along with the *Register* comprise the most current accounting of the State agencies' rules.

The *Illinois Register* is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, pars. 1001 et seq., as amended).

REGISTER PUBLICATION SCHEDULE 1991

Material Rec'd after 4:30 p.m. on:	And before 4:30 p.m. on:	Will be in Issue #:	Published on:	Material Rec'd after 4:30 p.m. on:	And before 4:30 p.m. on:	Will be in Issue #:	Published on:
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Please note: When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday *(the day before).*

DEPARTMENT OF FINANCIAL INSTITUTIONS

NOTICE OF PROPOSED AMENDMENTS

7. A holder is discovered as a subsidiary or affiliate of another holder which has been or is being examined.

8. A holder is discovered as a principal or holding company of another holder which has been or is being examined.

9. An unclaimed property examination of the records of the holder has not been performed for 5 or more calendar years.

10. Changes in a holder's business practices, including, but not limited to, changes in financial status, technological advances, corporate structure, change in ownership, etc.

(Source: Amended at 15 Ill. Reg. _____, effective _____)

DEPARTMENT OF MINES AND MINERALS

NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Areas Designated by Act of Congress

2) Code Citation: 62 Ill. Adm. Code 1761

3)

Section Number:	Proposed Action:
1761.11	Amended
1761.12	Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
Part 1761 establishes procedures and standards to be followed in determining whether a proposed surface mining operation can be permitted in light of the prohibitions and limitations in Section 7.01 of the Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7907.01.

The Illinois Department of Mines and Minerals (Department) is proposing to amend Section 1761.11(a) by deleting the word "future" in response to the Federal Office of Surface Mining Reclamation and Enforcement's (OSMRE) letter of December 21, 1990, wherein it is stated that guidelines established pursuant to the Wild and Scenic Rivers Act already exist. The proposed amendment serves to make the Department's requirements consistent with and no less effective than OSMRE's counterpart regulation, 30 CFR 761.11, and serves to incorporate by reference such guidelines in accordance with Section 6.02(b) of the Illinois Administrative Procedure Act. Ill. Rev. Stat. 1989, ch. 127, par. 1006.02.

The proposed amendments to Sections 1761.11(d) and 1761.12(c) would only require the approval of public road authorities where public roads are to be relocated or closed. The approval of public road authorities would no longer be required with respect to affected areas within one hundred (100) feet of a public road. These proposed amendments make the Department's regulations consistent with the fact that public road authorities have no jurisdiction under the Surface Coal Mining Land Conservation and Reclamation Act, Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq., with respect to affected areas; such jurisdiction is limited to relocation and closure of public roads.

The proposed amendment to Section 1761.12(c)(2) establishes a time limit in which public hearing requests must be submitted to the Department. The proposed amendment provides the Department and the public with guidance as to when a hearing must be requested.

DEPARTMENT OF MINES AND MINERALS

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6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? Yes

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m. in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

C) Reporting, bookkeeping or other procedures required for compliance: None

DEPARTMENT OF MINES AND MINERALS

NOTICE OF PROPOSED AMENDMENT(S)

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF MINES AND MINERALS

NOTICE OF PROPOSED AMENDMENT(S)

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1761
AREAS DESIGNATED BY ACT OF CONGRESS

Section
1761.1 Scope
1761.11 Areas Where Mining is Prohibited or Limited
1761.12 Procedures

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4933; amended at 11 Ill. Reg. 7976, effective July 1, 1987; amended at 14 Ill. Reg. 11777, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1761.11 Areas Where Mining is Prohibited or Limited

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) or study rivers or study river corridors as established in ~~any future~~ guidelines pursuant to that Act published at 47 FR 39454 (September 7, 1982), and National Recreation Areas designated by Act of Congress. The guidelines at 47 FR 39454 do not include any subsequent editions or amendments;

b) On any Federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary of the United States Department of the Interior (Secretary) finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and surface operations and impacts are incident to an underground coal mine;

c) On any lands which will adversely affect any publicly owned park or any places included on the National Register of Historic Places,

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unless approved jointly by the Department and the Federal, State or local agency with jurisdiction over the park or places;

d) Within one hundred (100) feet measured horizontally of the outside right-of-way line of any public road, except:

1) Where mine access roads or haulage roads join such right of way lines; or

2) Where the Illinois Department of Mines and Minerals (Department) ~~and--the-public-road-authority--with-jurisdiction over-the-road-under-Illinois-law~~ allows the ~~public-road-to-be relocated,--closed,-or--the~~ area affected, including surface areas impacted by planned subsidence, to be within one hundred (100) feet of such road, after:

A) Public notice and opportunity for a public hearing in accordance with Section 1761.12(c); ~~and~~

B) For relocated or closed public roads, the public road authority with jurisdiction over the road under Illinois law, allows the public road to be relocated or closed; and

~~B)~~ C) Making a written finding that the interests of the affected public and landowners will be protected~~;~~.

e) Within three hundred (300) feet measured horizontally, from any occupied dwelling in existence, under construction, or contracted for at the time of public notice, except when:

1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than three hundred (300) feet; or

2) The part of the mining operation which is within three hundred (300) feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

f) Within three hundred (300) feet measured horizontally of any public building, school, church, community or institutional building, or public park; or

g) Within one hundred (100) feet measured horizontally of a cemetery.

h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National

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Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

Section 1761.12 Procedures

a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the Department shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 1761.11 on the lands which would be disturbed by the proposed operations.

b) Federal recreational systems; public buildings; cemeteries

1) Where the proposed operation would be located on any lands listed in Section 1761.11(a), (f) or (g), the Department shall reject the application if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977.

2) If the Department is unable to determine whether the proposed operation is located within the boundaries of any of the lands in Section 1761.11(a) or closer than the limits provided in Section 1761.11(f) and (g), the Department shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty (30) days of receipt of the request. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of the notification in which to respond. The Department, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional thirty (30) days. If no response is received within 30-day period or within the extended period granted, the Department may make the necessary determination based on the information it has available.

c) Where the proposed mining operation is proposed to be conducted within one hundred (100) feet measured horizontally~~,~~ of the outside right-of-way line of any public road (except as provided in Section 1761.11(d)(2))~~, or where the applicant proposes to relocate or close any public road,~~ the Department ~~and the public road authority with~~

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~~jurisdiction over the road under Illinois law~~ shall:

1) For relocation or closure of a public road, Rrequire the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

2) Provide public notice in a newspaper of general circulation of the affected locale of an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected~~;~~. Any person with an interest which is or may be adversely affected by the proposed mining operation may request in writing that the Department hold a public hearing. Such request shall be submitted to the Department within fourteen (14) days after the newspaper notice required by this subsection.

3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two (2) weeks prior to the hearing; and

4) Make a written finding based upon information received at the public hearing within thirty (30) days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. No mining shall be allowed within one hundred (100) feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the Department and public road authority determines that the interests of the public and affected landowners will be protected.

d) Occupied dwellings

1) Where the proposed surface coal mining operations would be conducted within three hundred (300) feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within three hundred

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(300) feet of such dwelling, a new waiver shall not be required.

3)

A) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

B) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the three hundred (300) foot limit prior to the date of purchase.

e) Publicly owned parks; places included in the National Register of Historic Places

1) Where the Department determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Department shall transmit to the Federal, State, or local agencies with jurisdiction over the publicly owned park or National Register place a copy of applicable parts of the permit application together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has thirty (30) days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Department, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional thirty (30) days. Failure to interpose an objection within thirty (30) days of the extended period granted shall constitute an approval of the proposed permit.

2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

f) If the Department determines that the proposed surface coal mining operation is not prohibited under Section 7.01 of the State Act and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 62 Ill. Adm. Code 1762 or 1764.

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g) A determination by the Department that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 62 Ill. Adm. Code 1775.11 and 1775.13.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

DEPARTMENT OF MINES AND MINERALS

NOTICE OF PROPOSED RULE(S)

1) The Heading of the Part: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

2) Code Citation: 62 Ill. Adm. Code 1702

3)

Section Number:	Proposed Action:
1702.1	New Section
1702.5	New Section
1702.10	New Section
1702.11	New Section
1702.12	New Section
1702.13	New Section
1702.14	New Section
1702.15	New Section
1702.16	New Section
1702.17	New Section
1702.18	New Section

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On February 7, 1990 and April 24, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) letters notifying it that since the Surface Coal Mining Land Conservation and Reclamation Act (State Act) provides an exemption for coal extraction incidental to the mining of other minerals, Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7901.06(b), the Department needed to revise its progam to include, among other things, exemption criteria and application and reporting requirements no less effective than those contained at OSMRE's newly promulgated 30 CFR 702. By these letters OSMRE notified the Department to amend its program requirements in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

In response to OSMRE's directives, the Department is proposing to add Part 1702, which implements the exemption contained in Section 1.06(b) of the State Act, to its regulatory program in order for Illinois' requirements to be consistent with and no less effective than counterpart Federal requirements at 30 CFR 702.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

DEPARTMENT OF MINES AND MINERALS

NOTICE OF PROPOSED RULE(S)

8) Do these proposed rules contain incorporations by reference? No

9) Are there any other rules pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed rules will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have gross annual sales of less than $4 million.

C) Reporting, bookkeeping or other procedures required for compliance: Persons planning to extract coal in reliance on the incidental mining exemption must apply to the Department for an exemption determination. Exemption applications must contain certain information as specified in proposed Section 1702.12.

DEPARTMENT OF MINES AND MINERALS

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Persons receiving an exemption must file an annual written report with the Department containing information covering annual production of and revenue derived from coal and other minerals during the preceding 12-month period, and the cumulative production of and revenue derived from coal and other minerals.

The burden for the collections of information contained in proposed Sections 1702.11 through 1702.15 and 1702.18 is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

D) Types of professional skills necessary for compliance: Bookkeeping

The full text of the Proposed Rules begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1702
EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

Section
1702.1 Scope
1702.5 Definitions
1702.10 Information Collection
1702.11 Application Requirements and Procedures
1702.12 Contents of Application for Exemption
1702.13 Public Availability of Information
1702.14 Requirements for Exemption
1702.15 Conditions of Exemption and Right of Inspection and Entry
1702.16 Stockpiling of Minerals
1702.17 Revocation and Enforcement
1702.18 Reporting Requirements

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at _____ Ill. Reg. _____, effective _____.

Section 1702.1 Scope

This Part implements the exemption contained in Section 1.06(b) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7901.06(b) (State Act) concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total mineral tonnage mined for purposes of commercial use or sale.

Section 1702.5 Definitions

As used in this Part, the following terms have the meaning specified, except where otherwise indicated:

a) Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured.

1) For purposes of determining the beginning of the cumulative measurement period, the operator must select and consistently use one of the following:

i) For mining areas where coal or other minerals were

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extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or the minerals commenced at that mining area, whichever is earlier.

2) For annual reporting purposes pursuant to Section 1702.18, the end of the period for which cumulative production and revenue is calculated is either:

i) For mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1990, and every March 31 thereafter; or

ii) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

b) Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by Section 1702.16.

c) Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

d) Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed.

e) Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

Section 1702.10 Information Collection

The collections of information contained in Sections 1702.11, 1702.12, 1702.13, 1702.15 and 1702.18 will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with Section 1.06(b) of the State Act.

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Section 1702.11 Application Requirements and Procedures

a)

1) Any person who plans to commence or continue coal extraction after the effective date of this Part in reliance on the incidental mining exemption shall file a complete application for exemption with the Illinois Department of Mines and Minerals (Department) for each mining area.

2) No person may commence coal extraction based upon the exemption until the Department approves such application for exemption, except as provided in 1702.11(e)(3)

b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of this Part may continue mining operations for sixty (60) days after such effective date. Coal extraction may not continue after such sixty (60) day period unless that person files an administratively complete application for exemption with the Department. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the Department makes an administrative decision on such application.

c) Additional information. The Department shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

d) Public comment period. Written comments or objections to an application for exemption may be submitted to the Department by any person having an interest which is or may be adversely affected by the decision on the application within thirty (30) days after the newspaper notice required by Section 1702.12(i).

e) Exemption determination.

1) No later than ninety (90) days after the filing of an administratively complete application, the Department shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this Part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

2) The determination of exemption shall be based upon

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information contained in the application and any other information available to the Department at that time.

3) If the Department fails to provide an applicant with the determination as specified in subsection (e)(1), an applicant who has not begun may commence coal extraction pending a determination on the application unless the Department issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

f) Administrative hearing.

1) Any adversely affected person may request administrative review of a determination under subsection (e) within thirty (30) days of the notification of such determination in accordance with procedures established under 62 Ill. Adm. Code 1775.11.

2) A petition for administrative hearing filed under 62 Ill. Adm. Code 1775.11 shall not suspend the effect of a determination under Section 1702.11(e).

Section 1702.12 Contents of Application for Exemption

An application for exemption shall include:

a) The name and address of the applicant;

b) A list of the minerals sought to be extracted;

c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

f) The basis of all annual production, revenue, and fair market value estimates;

g) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

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h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operations;

i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Department. The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation;

j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

k) A map of appropriate scale which clearly identifies the mining area;

l) A general description of mining and mineral processing activities for the mining area;

m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

n) If the other minerals are to be commercially used by the applicant, a description specifying the use;

o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

1) Any documents the operator has received from the Department documenting its exemption from the requirements of the State Act;

2) The cumulative production of the coal and other minerals from the mining area;

3) Estimated tonnages of stockpiled coal and other minerals;

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and

p) Any other information the applicant believes is pertinent to the qualification of the operation as exempt.

Section 1702.13 Public Availability of Information

a) Except as provided in Section 1702.13(b), all information submitted to the Department under this Part shall be made immediately available for public inspection and copying at the Department's Springfield and Carterville Land Reclamation Division Offices until at least three (3) years after expiration of the period during which the subject mining area is active.

b) The Department may keep information submitted under this Part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this Part.

c) Information requested to be held as confidential under Section 1702.13(b) shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 1702.14 Requirements for Exemption

a) Activities are exempt from the requirements of the State Act if all of the following are satisfied:

1) The cumulative production of coal extracted from the mining area determined annually as described in this Section does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed fifty (50) percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator

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or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

b) Persons seeking or that have obtained an exemption from the requirements of the State Act shall comply with the following:

1) Each other mineral upon which an exemption under this Part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

Section 1702.15 Conditions of Exemption and Right of Inspection and Entry

A person conducting activities covered by this Part shall:

a) Maintain on-site or at other locations available to authorized representatives of the Department information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Department;

b) Notify the Department upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

c) Conduct operations in accordance with the approved application or when authorized to extract coal under Section 1702.11(b) or Section 1702.11(e)(3) prior to submittal or approval of an exemption application, in accordance with the standards of this Part.

d) Authorized representatives of the Department shall have the right to conduct inspections of operations claiming exemption under this Part.

e) Each authorized representative of the Department conducting an inspection under this Part:

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1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

3) Shall have a right to gather physical and photographic evidence to document conditons, practices or violations at a site.

f) No search warrant shall be required with respect to any activity under Sections 1702.15(d) and (e), unless otherwise required by the Criminal Code of 1961. Ill. Rev. Stat. 1989, ch. 38, pars. 108-1 et seq.

Section 1702.16 Stockpiling of Minerals

a) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

b) Other minerals.

1) The Department shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

2) The Department may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if:

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i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

ii) Except as provided in Section 1702.16(b)(3), the stockpiled other minerals do not exceed the 12-month supply of the mineral required for future sales as approved by the Department on the basis of the exemption application.

3) The Department may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in Section 1702.16(b)(2) if the operator can demonstrate to the Department's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

4) The Department may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by Sections 1702.16(b)(2) and (3) based on additional information available to the Department.

Section 1702.17 Revocation and Enforcement

a) Department responsibility. The Department shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to Section 1702.18, an on-site inspection and any other information available to the Department.

b) If the Department has reason to believe that a specific mining area was not exempt under the provisions of this Part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department shall notify the operator that the exemption may be revoked unless the operator demonstrates to the Department within thirty (30) days that the mining area in question should continue to be exempt.

c) Exemption revocation.

1) If the Department finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the Department shall revoke the exemption and immediately notify the operator and any person having an interest which is or may be adversely affected by the revocation. If a decision is made not to revoke an

exemption, the Department shall immediately notify the operator and any person having an interest which is or may be adversely affected by the decision.

2) Any person having an interest which is or may be adversely affected may request administrative hearing of a decision whether to revoke an exemption within thirty (30) days of the notification of such decision in accordance with procedures established under 62 Ill. Adm. Code 1775.11.

3) A petition for administrative hearing filed under Section 1775.11 shall not suspend the effect of a decision whether to revoke an exemption.

d) Direct enforcement.

1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

2) An operator who does not conduct activities in accordance with the terms of an approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of 62 Ill. Adm. Code 1800-1850 with regard to conditions, areas and activities existing at the time of revocation or denial.

Section 1702.18 Reporting Requirements

a) Written report.

1) Following approval by the Department of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the Department containing the information specified in Section 1702.18(b).

2) The report shall be filed no later than thirty (30) days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in Section 1702.5.

3) The information in the report shall cover:

i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and

ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

b) For each period and mining area covered by the report, the report shall specify:

1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

3) The number of tons of coal stockpiled;

4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

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1) The Heading of the Part: General

2) Code Citation: 62 Ill. Adm. Code 1700

3) Section Number: 1700.11 — Proposed Action: Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On February 7, 1990 and April 24, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) letters notifying it that its 16 2/3 exemption for coal extraction incidental to the extraction of other minerals at 62 Ill. Adm. Code 1700.11(a)(2) was deficient absent the promulgation of exemption criteria and application and reporting requirements no less effective than those contained at OSMRE's newly promulgated 30 CFR 702. By these letters OSMRE notified the Department to amend its program requirements in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On November 2, 1990, OSMRE's Springfield Field Office Director sent the Department a letter notifying that additional portions of 62 Ill. Adm. Code 1700.11 were inconsistent with counterpart Federal regulations.

The following discussion describes the proposed amendments of Part 1700 in response to OSMRE's directives.

The Department is proposing to amend Section 1700.11(a) in order to make clear that all of the Department's rules apply unless an operation is exempted, rather that just the rules at Part 1700.

The Department is proposing to amend Section 1700.11(a)(2) by adding a reference to 62 Ill. Adm. Code 1702 and thereby making the incidental coal extraction exemption subject to the requirements of newly proposed Part 1702.

The Department is proposing to add a new sentence at the end of subsection (c) in order to clarify that, unless otherwise specified, the referenced rules apply to both coal exploration and surface coal mining and reclamation operations regardless of whether a permit is required. The amendments serve to make the Departments rules consistent with OSMRE's counterpart rules at 30 CFR 700.11.

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The Department is also proposing to change the dates referencing statutory and regulatory provisions in subsections (a)(3) and (4) and subsection (c) to reflect the latest versions of such statutes and regulations.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

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C) Reporting, bookkeeping or other procedures required for compliance: None

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1700
GENERAL

Section
1700.11 Applicability
1700.12 Petitions to Initiate Rulemaking
1700.13 Notice of Citizen Suits
1700.14 Availability of Records
1700.15 Computation of Time
1700.16 Fees and Forfeitures
1700.17 Administration
1700.18 Advisory Council on Reclamation

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9347; amended at 11 Ill. Reg. 8051, effective July 1, 1987; amended at 14 Ill. Reg. 11795, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1700.11 Applicability

a) ~~This Part~~ The requirements of 62 Ill. Adm. Code 1700-1850 ~~applies~~ apply to all coal exploration and surface coal mining and reclamation operations, except:

1) The extraction of coal by a landowner or lessee for the landowner's or lessee's own noncommercial use from land owned or leased by him or her where two hundred and fifty (250) tons or less of coal are removed in any twelve (12) consecutive months. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

2) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the total mineral tonnage mined for purposes of commercial use or sale in accordance with 62 Ill. Adm. Code 1702.~~---(Section 1.06 of the Surface Coal Mining Land Conservation and Reclamation Act)--(Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.06(b));~~

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3) Coal exploration on lands subject to the requirements of 43 CFR 3480-3487 (19869); and

4) The extraction of coal on Federal lands except to the extent provided under a cooperative agreement with the United States. Section 1.06 of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 19879, ch. 96 1/2, par. 7901.06(d)).

b) The Illinois Department of Mines and Minerals (Department) shall, within sixty (60) days of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under subsection (a). The Department shall, within thirty (30) days of receipt of a request for exemption under subsection (a), publish notice of the request in a newspaper of general circulation in the area of the proposed exempted operation and send the request to interagency members. Prior to the time a determination is made, any person may submit, and the Department shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who has made a complete and accurate request for an exemption and relied upon the determination shall not be cited for violations which occurred prior to the date of the reversal.

c) The requirements of 62 Ill. Adm. Code 1800 through 1850 (the permanent program regulations) apply to all surface coal mining and reclamation operations for which the surface coal mining operation is required to obtain a permit under the Surface Coal Mining Land Conservation and Reclamation Act (the State Act) (Ill. Rev. Stat. 19879, ch. 96 1/2, pars. 7901.01 et seq.) on and after February 1, 1983. 62 Ill. Adm. Code 1815 and 1840 through 1846 apply to both coal exploration operations and surface coal mining and reclamation operations regardless of whether a permit is required, except as otherwise specified in those rules.

d) Existing structures

1) Each structure used in connection with a coal exploration or surface coal mining and reclamation operations shall comply with the performance standards and the design requirements of the permanent program regulations except that:

A) The Department shall exempt an existing structure which meets the performance standards of the permanent program

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regulations but does not meet the design requirements of the permanent program regulations from meeting those design requirements. The Department shall grant this exemption as part of the permit application process after both obtaining the information 62 Ill. Adm. Code 1780.12 or 1784.12 require and after the Department makes the findings required in 62 Ill. Adm. Code 1773.15(c)(6) and;

B) If a performance standard in 62 Ill. Adm. Code 280 (interim program regulations) is at least as stringent as the comparable performance standard of the permanent program regulations, an existing structure which meets the performance standards of the interim program regulations shall be exempted by the Department from meeting the design requirements of the permanent program regulations. The Department will grant this exemption as part of the permit application process after obtaining the information 62 Ill. Adm. Code 1780.12 or 1784.12 require and after the Department makes the findings required in 62 Ill. Adm. Code 1773.15(c)(6).

2) The exemptions provided in subsections (d)(1)(A) and (d)(1)(B) shall not apply to:

A) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and

B) The requirements to restore the approximate original contour of the land.

3) The permittee shall modify or reconstruct an existing structure which meets a performance standard of the interim program regulations which is incompatible with the permanent program regulations to meet the design standard of the permanent program regulations, pursuant to 62 Ill. Adm. Code 1773.15(c)(6), 1780.12 and 1784.12.

4) The permittee shall modify or reconstruct an existing structure which does not meet the performance standards of the interim program regulations and which the applicant proposes to use in connection with a coal exploration or surface coal mining and reclamation operation to meet the design standards of the permanent program regulations prior to issuance of the permit.

e) Effective dates

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1) Any person conducting coal exploration on or after February 1, 1983, shall either file a notice of intention to explore or obtain approval of the Department, as required by 62 Ill. Adm. Code 1772.

2) Coal exploration performance standards in 62 Ill. Adm. Code 1815 apply after August 3, 1982.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: General Definitions

2) Code Citation: 62 Ill. Adm. Code 1701

3) Section Number: 1701.Appendix A — Proposed Action: Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17. One of the inconsistencies identified by OSMRE was the Department's lack of a definition of "road." The Department was instructed to adopt a definition no less effective than the federal rule.

Additionally, the Department has identified statutory citations throughout Section 1701.Appendix A which must be amended to reflect proper citation form.

The following discussion describes the proposed amendments of Part 1701 in response to OSMRE's directive and agency concerns.

Section 1701.Appendix A sets forth the Department's general definitions. The proposed addition of "road" to Section 1701.Appendix A serves to make the Department's regulations consistent with the definitions in the OSMRE counterpart regulation, 30 CRF 701.5.

The proposed amendments to statutory citations througout Section 1701.Appendix A serve to correct the dates within such citations. In addition, clerical errors have been corrected throughout the section.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will

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have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
Comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991 at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

C) Reporting, bookkeeping or other procedures required for compliance: None

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1701
GENERAL DEFINITIONS

Section
1701.5 Definitions
APPENDIX A Definitions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4932; amended at 11 Ill. Reg. 8075, effective July 1, 1987; amended at 14 Ill. Reg. 11800, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1701.APPENDIX A Definitions

As used in 62 Ill. Adm. Code 1700 - 1850, the following terms have the specified meanings, except when another meaning is given:

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid - forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weather processes, form acids that may create acid drainage.

"Act or Federal Act" means the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. (30 U.S.C. 1201 et seq.).

"Adjacent area" means the area located outside the permit area, or shadow area, where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

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"Affected area" means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: any water or surface land upon which those activities are conducted or located.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Applicant" means any person seeking a permit; permit revision; renewal; or transfer, assignment or sale from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Department under these regulations for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"APPROXIMATE ORIGINAL CONTOUR" MEANS THAT SURFACE CONFIGURATION ACHIEVED BY BACKFILLING AND GRADING OF THE MINED AREAS SO THAT THE RECLAIMED AREA, INCLUDING ANY TERRACING OR ACCESS ROADS, CLOSELY RESEMBLES THE GENERAL SURFACE CONFIGURATION OF THE LAND PRIOR TO MINING AND BLENDS INTO AND COMPLIMENTS THE DRAINAGE PATTERN OF THE SURROUNDING TERRAIN, WITH ALL HIGHWALLS, AND SPOIL PILES AND COAL REFUSE PILES ELIMINATED. Permanent water impoundments may be permitted where the Department has determined that they comply with 62 Ill. Adm. Code 1816.49 and 1816.56, 1816.133 or 1817.49, 1817.56 and 1817.133. Section 1.03(a)(2) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.03(a)(2)).

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for specific use.

"Article" means an article of the State Act.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the cliff or highwall and transporting the coal along an auger bit to the surface.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will

prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess

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of requirements set by 62 Ill. Adm. Code 1816.42; and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 62 Ill. Adm. Code 1816 and 1817.

"Boxcut" means the first open cut resulting in the placing of overburden on unmined land adjacent to the initial pit.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-84 found at pp. 247-252 in Vol 5.05 of the Annual Book of ASTM Standards published by the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

"Coal exploration" means the field gathering of:

surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 62 Ill. Adm. Code 1700 - 1850.

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the area upon which such activities occur.

"Coal processing or coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops and

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other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for functions of community groups; used for an educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the Department determines contains all information which the State Act and 62 Ill. Adm. Code 1700 - 1850 require.

"Consolidated material" means materials of sufficient hardness or stability to resist weathering so as to inhibit erosion or sloughing.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

the proposed operation;
all existing operations;
any operation for which a permit application has been submitted to the Department.

"Darkened surface soil" means mineral horizons formed at or adjacent to the surface of the soil which are higher in organic matter content, and

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visibly darker in color than the immediately underlying horizons.

"Department" means the Illinois Department of Mines and Minerals, or its successor.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director of the Department.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 62 Ill. Adm. Code 1800 is released.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means

any person employed by the Department who performs any function or duty under the Act; and
advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Department under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

"Ephemeral stream" means a stream which meets both requirements:

It flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and
It has a channel bottom that is always above the local water table.

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"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided, the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 62 Ill. Adm. Code 1816.102(d) and 1817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure used in connection with surface coal mining and reclamation operations for which construction began prior to June 1, 1982.

"Federal Director" means the Director of the Federal Office of Surface Mining Reclamation and Enforcement.

"Final cut" means the last pit created in a surface-mined area.

"Fragile lands" means geographic areas containing important natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 7.01 of the State Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7907.01) and 62 Ill. Adm. Code 1761.11, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Gravity discharge" means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aboveground parts of vegetation and by the litter that is produced naturally on site.

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"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"High capability land" means land not meeting the definition of prime farmland or land exempted in accordance with 62 Ill. Adm. Code 1785.17 where the Department determines the following three facts are present together:

The land is capable of being reclaimed for row-crop agricultural purposes;

The land is suitable for row-crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining (all soil types in capability Classes I, II, III and those soil types in capability Class IV with slopes of five (5) percent or less), as set forth in Land-Capability Classification, Agriculture Handbook No. 210, published by the U.S. Department of Agriculture, Soil Conservation Service in 1973; and

the optimum future use of the land is for row-crop agricultural purposes.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Higher or better uses" means post-mining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

"Historically used for cropland" means:

Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the lands for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations;

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Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration that the permit area is clearly cropland but falls outside the specific five (5)-year-in-ten (10) criterion, in which case the regulations for prime farmland shall be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or
Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means important historic, cultural, and scientific areas that could be be damaged or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent danger to the health and safety of the public" MEANS THE EXISTENCE OF ANY CONDITION OR PRACTICE, OR ANY VIOLATION OF A PERMIT OR OTHER REQUIREMENTS OF THE STATE ACT IN A SURFACE COAL MINING AND RECLAMATION OPERATION, WHICH COULD REASONABLY BE EXPECTED TO CAUSE SUBSTANTIAL PHYSICAL HARM TO PERSONS OUTSIDE THE PERMIT AREA BEFORE THE CONDITION, PRACTICE, OR VIOLATION CAN BE ABATED. A REASONABLE EXPECTATION OF DEATH OR SERIOUS INJURY BEFORE ABATEMENT EXISTS IF A RATIONAL PERSON, SUBJECTED TO THE SAME CONDITION OR PRACTICE GIVING RISE TO THE PERIL, WOULD AVOID EXPOSURE TO THE DANGER DURING THE TIME NECESSARY FOR ABATEMENT. Section 1.03(a)(7) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.03(a)(7)).

"Impounding structure" means a dam, embankment, or other structure used

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to impound water, slurry, or other liquid or semi-liquid material.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

"In situ processes" means activities conducted in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Institute" means the Department of Energy and Natural Resources or such other agency as designated by the Director in accordance with Section 7.03 of the State Act.

"Interagency Committee" means the Interagency Committee on Surface Mining Control and Reclamation Section 1.05 of the State Act created.

"Intermittent stream" means:
A stream or reach of a stream that drains a watershed of at least one (1) square mile; or
A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment in violation of the State Act or these regulations that cannot be corrected by actions of the applicant.

"Land capability" means the soils' premining capabilities based on the United States Department of Agriculture, Soil Conservation Service classification system as found in Agriculture Handbook No. 210, Land-Capability Classification, (published in 1973) as interpreted from the soils map for sustained production of commonly cultivated crops or for the production of permanent vegetation.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in

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combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department in accordance with 62 Ill. Adm. Code 1780.23.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.
"Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by the livestock or occasionally cut and cured for livestock feed.
"Grazingland" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.
"Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.
"Residential" means land used for single- and multiple-family housing, mobile home parks, and other residential lodgings.

"Industrial/Commercial" means land used for:
Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities.
Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.
"Recreation" is land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
"Fish and wildlife habitat" is land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Developed water resources includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
"Undeveloped land or no current use or land management" includes land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"MINING OPERATIONS OR SURFACE COAL MINING OPERATIONS" MEANS BOTH SURFACE MINING OPERATIONS AND UNDERGROUND MINING OPERATIONS. Section 1.03(a)(11) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.03(a)(11)).

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"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at one hundred and five degrees (105< C).

"MSHA" means the Mine Safety and Health Administration of the United States Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Noxious plants" means any plant species listed as a "noxious weed" under regulations authorized by the Illinois Noxious Weed Law (Ill. Rev. Stat. 1987, ch. 5, pars. 951 et seq.); any plant species whose seed is listed as a "prohibited (primary) noxious weed" or "restricted" (secondary) noxious weed" or "weed seeds" under regulations authorized by the Illinois Seed Law (Ill. Rev. Stat. 1987 ch. 5, pars. 401 et seq.); or any plant which the Department of Agriculture has declared a pest under the Illinois Pesticide Act. (Ill. Rev. Stat. 1987, ch. 5, pars. 801 et seq.)

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation. Office means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes or intends to remove more than two hundred and fifty (250) tons of coal from the earth or from coal refuse piles by mining within twelve (12) consecutive calendar months in any one location.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Perennial stream" means a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows continuously

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as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 - 1850, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means those decisions or actions, which if an employee performed or did not perform would affect the programs under the State Act.

"Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Department and other appropriate State and Federal agencies.

"Permanent impoundment" means an impoundment which the Department approved and, if required, is approved by other State and Federal agencies for retention as part of the post-mining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations which the Department issues pursuant to the State program.

"Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Department. This area shall include all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit indicated on the approved map which the operator submitted with the operator's application and which is required to be bonded under 62 Ill. Adm. Code 1800 and where the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided, that areas adequately bonded under another valid permit may be excluded from a permit area. The permit area excludes the area defined in these regulations as the shadow area.

"Permit term" MEANS THE PERIOD DURING WHICH THE PERMITTEE MAY ENGAGE IN MINING AND RECLAMATION OPERATIONS UNDER THE PERMIT. Section 1.03(a)(18) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.03(a)(18)).

"Permittee" means a person holding or required by the State Act or these regulations to hold a permit to conduct surface coal mining and reclamation operations issued by a Department pursuant to a State program.

"Person" means an individual, Indian tribe when conducting surface coal

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mining and reclamation operations on non-Indian lands, general partnership, limited partnership, business trust association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization or any agency, unit, or instrumentality of Federal, State or local government including any publicly-owned utility or publicly-owned corporation of Federal, State or local government.

"Person having an interest which is or may be adversely affected" or "Person with a valid legal interest" shall include any person:

Who uses any resources of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

"Placeland" means undisturbed land before any mining activity.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

"Previously mined area" means land that had been mined before August 3, 1977.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (43 Fed. Reg. 4031 (1978)) and which have historically been used for cropland as that phrase is defined above.

"Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface and mineral estates within the permit area and the mineral estate within the shadow area.

"Public building" means any structure that is owned or leased and principally used by a public government agency for public business or meetings.

"Public office" means a facility under the control of a governmental entity which is open to public access on a regular basis during

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reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

"Publicly-owned park" means a public park that is owned by a Federal, State or local governmental entity.

"Public road" means a road
which has been designated as a public road pursuant to the law of the jurisdiction in which it is located;
which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;
for which there is substantial (more than incidental) public use; and
which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Qualified registered professional engineer" means a civil engineer, mining engineer, environmental engineer or general engineer meeting the requirements of Section 9 of The Illinois Professional Engineering Act. (Ill. Rev. Stat. 1987~~9~~, ch. 111, par. 5112).

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions which these regulations require to restore mined land to a post-mining land use which the Department has approved. These actions do not include subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability.

"Recurrence interval" means the interval of time in which a precipitation

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event is expected to occur once, on the average. For example, the ten (10)-year, twenty-four (24)-hour precipitation event would be that twenty-four (24)-hour precipitation event expected to occur on the average once in ten (10) years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by Department - approved crop production methods. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regional director" means Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement or Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement's representative.

"Regulatory program" means Illinois' permanent regulatory program which the Office of Surface Mining Reclamation and Enforcement approved and set forth in 30 CFR 913.1-913.16 (1986). 30 CFR 913.1-913.16 do not include any subsequent amendments or editions.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

"Responsible land management" means that combination of preparation, maintenance, fertilization and tilling of land capable of producing row crops which would be practiced by a person in the business of producing row crops on unmined land in the same region on the same, or similar, soil type as the mined land being managed, which practices can reasonably be expected to continue after mining and reclamation are completed, as determined by the Department.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing

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or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces.

"Secretary" means the Secretary of the Interior or the Secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Shadow area" means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by the State Act that may be adversely impacted by underground mining operations including impacts of subsidence.

"Significant forest cover" means an area where the plant community consists predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air or water resources" means:

An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life;

An environmental harm is imminent if a condition, practice, or violation exists which:

Is causing such harm; or

May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 8.06(c) of the State Act. (Ill. Rev. Stat. 1987~~9~~, ch. 96 1/2, par. 7908.06(c)).

An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Siltation structure" means a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will meet applicable effluent standards.

"Slope" means average inclination of a surface measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

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"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

A horizon. The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from the underlying B horizon in the same ~~sequum~~ sequim by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B horizon. The layer that typically is immediately beneath the A and E horizons and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 62 Ill. Adm. Code 1785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Act" means the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987~~9~~, ch. 96 1/2, pars. 7901.01 et seq.)

"State regulatory program" means the Illinois program which the Secretary approved on June 1, 1982 pursuant to 30 CFR 732.1 through 732.15.

"Steep slope" means any slope of more than twenty (20) degrees or such lesser slope as the Department may designate after consideration of such regional characteristics as soil and climate.

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"Substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine alone, as described in the above example, are not sufficient to constitute substantial legal and financial commitments.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface coal mining and reclamation operations", or "mining and reclamation operations", means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations".

"Surface coal mining operations", or "mining operations" means:

Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine-site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds (16 2/3)

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per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Federal Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

The areas upon which the activities described in subsection (a) occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"SURFACE MINING OPERATIONS" MEANS ACTIVITIES CONDUCTED ON THE SURFACE OF LANDS IN CONNECTION WITH A SURFACE COAL MINE OR SURFACE OPERATIONS. SUCH ACTIVITIES INCLUDE EXCAVATION FOR THE PURPOSE OF OBTAINING COAL INCLUDING SUCH COMMON METHODS AS CONTOUR, STRIP, AUGER, MOUNTAINTOP REMOVAL, BOX CUT, OPEN PIT, AND AREA MINING, COAL RECOVERY FROM COAL WASTE DISPOSAL AREAS, THE USE OF EXPLOSIVES AND BLASTING, AND IN SITU DISTILLATION OR RETORTING, LEACHING OR OTHER CHEMICAL OR PHYSICAL PROCESSING, AND THE CLEANING, CONCENTRATING, OR OTHER PROCESSING OR PREPARATION, LOADING OF COAL AT OR NEAR THE MINE SITE; AND THE AREAS ON WHICH SUCH ACTIVITIES OCCUR OR WHERE SUCH ACTIVITIES DISTURB THE NATURAL LAND SURFACE. SUCH AREAS INCLUDE ANY ADJACENT LAND THE USE OF WHICH IS INCIDENTAL TO ANY SUCH ACTIVITIES, ALL LANDS AFFECTED BY THE CONSTRUCTION OF NEW ROADS OR THE IMPROVEMENT OR USE OF EXISTING ROADS TO GAIN ACCESS TO THE SITE OF SUCH ACTIVITIES AND FOR HAULAGE, AND EXCAVATIONS, WORKINGS, IMPOUNDMENTS, DAMS, REFUSE BANKS, DUMPS, STOCKPILES, OVERBURDEN PILES, SPOIL BANKS, CULM BANKS, TAILINGS, HOLES OR DEPRESSIONS, REPAIR AREAS, STORAGE AREAS, PROCESSING AREAS, SHIPPING AREAS AND OTHER AREAS UPON WHICH ARE SITED STRUCTURES, FACILITIES, OR OTHER PROPERTY OR MATERIALS ON THE SURFACE, RESULTING FROM OR INCIDENT TO SUCH ACTIVITIES. Section 1.03(a)(24) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.03(a)(24)).

"Suspended solids or nonfilterable residue, expressed as milligrams per liter", means any materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and

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reclamation operations and which the Department has not approved to remain after reclamation.

"Temporary impoundment" means an impoundment which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

"Ton" means two thousand (2000) pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

"Toxic - forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to living organisms or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill or injure, or impair living organisms commonly present in the area that might be exposed to it.

"Transfer, assignment or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit which the Department issued.

"Underground development waste" means waste rock mixtures resulting from development of areas for underground mining activities.

"Underground Mining Activities" means a combination of:

Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"UNDERGROUND MINING OPERATIONS" MEANS THE UNDERGROUND EXCAVATION OF COAL; AND

SURFACE OPERATIONS INCIDENT TO THE UNDERGROUND EXTRACTION OF COAL, SUCH AS CONSTRUCTION, USE, MAINTENANCE, AND RECLAMATION OF ROADS,

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ABOVE-GROUND REPAIR AREAS, STORAGE AREAS, PROCESSING AREAS, SHIPPING AREAS, AREAS ON WHICH ARE SITED SUPPORT FACILITIES INCLUDING HOIST AND VENTILATION DUCTS, AREAS USED FOR THE STORAGE AND DISPOSAL OF WASTE, AND AREAS ON WHICH MATERIALS INCIDENT TO UNDERGROUND MINING OPERATIONS ARE PLACED; AND

UNDERGROUND OPERATIONS INCIDENT TO UNDERGROUND EXCAVATION OF COAL, SUCH AS UNDERGROUND CONSTRUCTION, OPERATION, AND RECLAMATION OF SHAFTS, ADITS, UNDERGROUND SUPPORT FACILITIES, IN SITU PROCESSING, AND UNDERGROUND MINING, HAULING, STORAGE, OR BLASTING. SECTION 1.03(a)(26) OF THE SURFACE COAL MINING LAND CONSERVATION AND RECLAMATION ACT (Ill. Rev. Stat. 1987$\underline{9}$, ch. 96 1/2, par. 7901.03(a)(26)).

"UNWARRANTED FAILURE TO COMPLY" MEANS THE FAILURE OF A PERMITTEE TO PREVENT THE OCCURRENCE OF ANY VIOLATION OF THE OPERATOR'S PERMIT OR ANY REQUIREMENT OF THE STATE ACT DUE TO INDIFFERENCE, LACK OF DILIGENCE, OR LACK OF REASONABLE CARE, OR THE FAILURE TO ABATE ANY VIOLATION OF SUCH PERMIT OF THE STATE DUE TO INDIFFERENCE, LACK OF DILIGENCE, OR LACK OF REASONABLE CARE. SECTION 1.03(a)(27) OF THE SURFACE COAL MINING LAND CONSERVATION AND RECLAMATION ACT (Ill. Rev. Stat. 1987$\underline{9}$, ch. 96 1/2, par. 7901.03(a)(27)).

"Valid existing rights" means:

Except for haul roads, that a person possesses valid existing rights for an area protected under Section 7.01 of the State Act (Ill. Rev. Stat. 1987$\underline{9}$, ch. 96 1/2, par. 7907.01) on August 3, 1977, if the application of any of the prohibitions contained in that Section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Section 15 of the Illinois Constitution of 1970 or both.

For haul roads

A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977,; or at the time of the designation of an area, as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of the coming into existence, within the prohibited distance, of a structure, road, cemetery, or other activity listed in Section 7.01 of the State Act, or

Any other road in existence as of August 3, 1977. or at the time of the designation of an area as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of coming into existence, within the prohibited distance of a structure, road, cemetery or other activity listed in Section 7.01 of the State Act.

Where an area comes under the protection of Section 7.01 of the State Act after August 3, 1977, valid existing right shall be found if:

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On the date the protection comes into existence, a validly authorized surface coal mine operation exists on that area; or

The prohibition caused by Section 7.01 of the State Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Section 15 of Illinois Constitution of 1970 or both.

Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon Illinois case law concerning interpretation of documents conveying mineral rights or, where Illinois case law is lacking, upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than twenty (20) degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

"Violation notice" means any notification, by letter, memorandum, legal or administrative pleading, or other written communication, from a governmental entity, telling of a violation of law.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful violation" means a deliberate act or omission which violates the State Act, these regulations, or any permit condition which the State Act requires.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Permanent Program Performance Standards--Surface Mining Activities

2) Code Citation: 62 Ill. Adm. Code 1816

3)

Section Number:	Proposed Action:
1816.49	Amended
1816.68	Amended
1816.84	Amended
1816.111	Amended
1816.116	Amended
1816.117	Amended
1816.150	Amended
1816.151	New Section
1816.APPENDIX A	Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On August 29, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE), by final rule, instructed the Illinois Department of Mines and Minerals (Department) to submit proposed amendments designed to correct defects identified in Illinois' rules. See 55 Fed. Reg. 35301 (August 29, 1990).

On September 20, 1989, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.

The following discussion describes the Department's proposed amendments to Part 1816 in response to these OSMRE directives and agency concerns.

Section 1816.49 sets forth the Department's performance standards for temporary and permanent impoundments constructed to facilitate surface coal mining operations. The proposed amendments to subsection (a)(4) provide an alternative to the performance standards in subsection (a)(3) by specifying that compliance with the U.S. Soil Conservation Service's standards satisfies the Department's performance standards for certain impoundments. The proposed amendments will provide a design standard alternative to the current performance standard safety factor

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requirements. Such design standards are specifically provided for at 53 Fed. Reg. 43584 (October 27, 1988). The proposed amendment to subsection (b)(9) corrects a typographical error.

Section 1816.68 sets forth the Department's requirements for compiling and maintaining records of blasting operations. The Department proposes to amend subsection (a) by adding weather conditions to the list of data required to be maintained by operators in their records of blasting operations. The proposed amendment requiring that recorded blast data address weather conditions satisfies OSMRE's directive. See 55 Fed. Reg. 35301 (August 29, 1990).

Section 1816.84 sets forth the Department's requirements regarding coal mine waste impounding structures. The proposed amendment to subsection (b)(2) requires that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event, rather than a 100 year, 6-hour precipitation event. The proposed addition of subsection (f) specifies that, for impounding structures constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event must be removed within the 10-day period following each occurrence of that event. The proposed amendments serve to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 816.84.

Section 1816.111 establishes general requirements for revegetation. The proposed amendments to subsections (a)(4) and (b)(1) correct clerical errors. The proposed amendments to subsection (b)(5) correct statutory citations.

Section 1816.116 sets forth the Department's requirements for revegetation success standards. Proposed new subsections (D) and (E) define the extent to which rill and gully repairs can be considered nonaugmentative. These proposed amendments are in response to OSMRE's directive in their September 20, 1989 letter to the Department. The proposed amendment to subsection (a)(3) establishes a method for evaluating revegetation success of ground cover, in accordance with OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3)(C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. The amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3)(D) changes the word

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"stocking" to "population" in order to enhance clarity and avoid confusion.

The first proposed amendment to subsection (a)(3)(E) specifies that for revegetation success purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period. The amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed new last sentence of subsection (a)(3)(E) allows one (1) successful year of corn production to be used as a substitute for one (1) successful year of hay production, for revegetation success purposes, on high capability land. The purpose of this amendment is to maximize land use management alternatives on cropland capable land.

The proposed amendment to subsection (a)(4)(A)(iii) corrects the citation to the Department's regulations.

The proposed amendment to subsection (a)(4)(D) limits the use of wheat crops for revegetation success purposes to one (1) year. Limiting wheat crop usage to one (1) year serves to assure that full restoration of prime farmland cropland occurs, as wheat crops do not fully utilize the entire root zone, nor do they grow during moisture deficit years. Thus, although wheat is typically grown on reclaimed areas, it does not reveal the productive capability for all crops and is therefore being limited to one year's usage.

The proposed amendment to subsection (b)(2) changes the deadline date for reclamation activity report submittals to coincide with a related submittal required under Section 1816.116(a)(4).

Section 1816.117 sets forth the Department's requirements for tree and shrub vegetation. The proposed terminology changes in subsection (a) from "stocking" to "population" or "vegetation" enhance clarity and avoid confusion.

The proposed amendment to subsection (a)(1) requires that for revegetation success purposes, survival counts be taken during the last year of the five (5) year responsibility period. Such counts could previously have been taken in the third year of the five (5) year responsibility period. The proposed amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3) responds to OSMRE's September 20, 1989 directive by making clear that ground cover is not required on impervious structures only.

The proposed amendment to subsecton (a)(4) corrects a typographical

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error.

Proposed new subsection (a)(5) defines what are considered normal husbandry and conservation practices in accordance with OSMRE's September 20, 1989 letter to the Department.

The proposed terminology changes in subsections (b) and (c) enhance clarity and avoid confusion. The proposed amendment to subsection (c)(2) corrects a typographical error.

Proposed new subsection (d) establishes a technique for measuring the revegetative success of ground cover in accordance with OSMRE's September 20, 1989 directive.

Section 1816.150 sets forth the Department's requirements for the protection of roads. The proposed rewrite of Section 1816.150 establishes classification criteria for mine roads, performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with surface coal mining operations, environmental protection criteria for the design, construction and reconstruction of roads, and requirements for the location and maintenance of roads associated with surface coal mining operations. The proposed rewrite of Section 1816.150 serves to bring Illinois' regulations into conformance with OSMRE's counterpart regulation, 30 CFR 816.150.

Proposed new Section 1816.151 establishes performance standards for primary roads in addition to those contained at Section 1816.150. Specifically, Section 1816.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing. Proposed new Section 1816.151 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 816.151.

Section 1816.Appendix A sets forth the Agricultural Lands Productivity Formula. The proposed amendments to Soybean Sampling Technique, Drilled or Planted Beans correct a mathematical error in the formula.

The proposed amendments to Wheat Sampling Technique and Oats Sampling Techniques establish a mathematical formula for measuring row crops. The existing formulas provide a measurement for broadcast plantings only.

The proposed amendments to Mixed Hay Sampling Techniques correct a mathematical error in the formula.

6) Will this proposed rule replace an emergency rule currently in effect?
No

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7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? Yes

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
Written comments regarding this proposoal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have annual sales of less than $4 million.

C) Reporting, bookkeeping or other procedures required for compliance:
Section 1816.68(a) requires mine operators to add wind velocity and direction and weather conditions to the list of data required to be

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maintained in their records of blasting operations.

Section 1816.116(a)(3) requires that vegetative ground cover be measured using the technique set forth in proposed Section 1816.117(d) for revegetation success purposes.

Section 1816.150 establishes more extensive performance standards relating to roads than previously existed.

Section 1816.151 establishes additional performance standards for primary roads and requires professional engineering skills and report certifications.

D) Types of professional skills necessary for compliance: Professional Engineer

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1816
PERMANENT PROGRAM PERFORMANCE STANDARDS - SURFACE MINING ACTIVITIES

Section
1816.11 Signs and Markers
1816.13 Casing and Sealing of Drilled Holes: General Requirements
1816.14 Casing and Sealing of Drilled Holes: Temporary
1816.15 Casing and Sealing of Drilled Holes: Permanent
1816.21 Topsoil: General Requirements (Repealed)
1816.22 Topsoil and Subsoil
1816.23 Topsoil: Storage (Repealed)
1816.24 Topsoil: Redistribution (Repealed)
1816.25 Topsoil: Nutrients and Soil Amendments (Repealed)
1816.41 Hydrologic Balance Protection
1816.42 Hydrologic Balance: Water Quality Standards and Effluent Limitations
1816.43 Diversions
1816.44 Hydrologic Balance: Stream Channel Diversions (Repealed)
1816.45 Hydrologic Balance: Sediment Control Measures
1816.46 Hydrologic Balance: Siltation Structures
1816.47 Hydrologic Balance: Discharge of Structures
1816.48 Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil (Repealed)
1816.49 Impoundments
1816.50 Hydrologic Balance: Ground Water Protection (Repealed)
1816.51 Hydrologic Balance: Protection of Ground Water Recharge Capacity (Repealed)
1816.52 Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1816.53 Hydrologic Balance: Transfer of Wells (Repealed)
1816.54 Hydrologic Balance: Water Rights and Replacement (Repealed)
1816.55 Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1816.56 Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
1816.57 Hydrologic Balance: Stream Buffer Zones
1816.59 Coal Recovery
1816.61 Use of Explosives: General Requirements
1816.62 Use of Explosives: Pre-Blasting Survey
1816.64 Use of Explosives: Public Notice of Blasting Schedule
1816.65 Use of Explosives: Surface Blasting Requirements (Repealed)
1816.66 Use of Explosives: Blasting Signs, Warnings, and Access Control
1816.67 Use of Explosives: Control of Adverse Effects

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1816.68 Use of Explosives: Records of Blasting Operations
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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8224; amended at 9 Ill. Reg. 13310, effective October 10, 1985; amended at 10 Ill. Reg. 8985, effective July 1, 1986; amended at 11 Ill. Reg. 8131, effective July 1, 1987; amended at 14 Ill. Reg. 11830, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1816.49 Impoundments

a) The requirements of this subsection apply to both temporary and permanent impoundments.

1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 (198990) and this Section. 30 CFR 77.216 does not include any later editions or amendments. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1780. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.

2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1780.25(a) as designed to meet the requirements of this Part using current, prudent engineering practices. The qualified registered professional engineer

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shall be experienced in the design and construction of impoundments.

3) Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2~~.~~, or

4) The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), are contained in U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs", October 1985. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds", April 1987. Technical Release No. 60 and Practice Standard 378 are hereby incorporated by reference and do not include later editions or amendments.

45) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

56) Foundations.

A) Foundations and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.

B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

67) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

78) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

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89) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).

910) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.

A) Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.

B) All other impoundments shall be inspected at least weekly during construction and upon completion of construction. The qualified registered professional engineer shall submit to the Department within thirty (30) days after each inspection, a sealed report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations.

C) A copy of the reports required in subsections (a)(9)(A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.

1011) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and these regulations. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed

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examination report shall be submitted to the Department within 30 days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 62 Ill. Adm. Code 1800.40. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection, following approval by the Department:

A) Impoundments that are completely incised;

B) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; and

C) Impoundments that do not facilitate mining or reclamation including, but not limited to, sewage lagoons, landscaping ponds, pools or wetlands in replaced stream channels, existing impoundments not yet used to facilitate mining, ephemeral waterbodies, active mining pits and differential settlement pools.

~~11~~12) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

1) The size and configuration of the impoundment is adequate for its intended purposes.

2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1816.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section

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1816.42.

3) The water level will be sufficiently stable and be capable of supporting the intended use.

4) Final grading will provide for adequate safety and access for proposed water users.

5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

6) The impoundment will be suitable for the approved post-mining land use.

7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

A) Runoff from above the slope shall be diverted to erosion free outlets.

B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period.

8) Embankment ponds, those having embankment heights of three (3) feet or greater above natural ground elevation, shall have outslopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less.

9) Permanent impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil and type.

10) In lieu of the combination principal and emergency spillway requirements of Section 1816.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections

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(b)(10)(A) and (b)(10)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (b)(9). The Department shall approve a single open-channel spillway that is:

A) Of nonerodible construction and designed to carry sustained flows; or

B) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

c) Temporary impoundments.

1) Temporary impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event or such larger event as may be required by the Department based on factors such as terrain, topography and soil type. Temporary impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

2) In lieu of the combination principal and emergency spillway requirements of Section 1816.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (c)(2)(A) and (c)(2)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (c)(1). The Department shall approve a single open-channel spillway that is:

A) Of nonerodible construction and designed to carry sustained flows; or

B) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

Section 1816.68 Use of Explosives: Records of Blasting Operations

a) A record of each blast, including seismograph reports, shall be retained by the operator for at least three (3) years and shall be available for inspection by the Department and the public on

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request. The record is to be completed by the end of the work day following the day in which the blast occurred, including the seismograph meter reading, if available, and shall contain the following data:

1) Name of the operator conducting the blast;

2) Location, date, and time of blast;

3) Name, signature, and certification number of the blaster conducting the blast;

4) The name of the owner or resident of, and the direction and distance, in feet, to the nearest dwelling, school, church, or commercial, or institutional building either:

A) Not located in the permit area; or

B) Not owned by the person who conducts the surface mining activities.

5) Type of material blasted;

6) Number of holes, burden, and spacing;

7) Diameter and depth of holes;

8) Types of explosives used;

9) Total weight of explosives used;

10) Weight of explosives used per hole;

11) Maximum weight of explosives detonated within any eight (8) millisecond period;

12) Maximum number of holes or decks detonated within any eight (8) millisecond period;

13) Initiation system;

14) Type and length of stemming;

15) Type of delay detonator and delay periods used;

16) Sketch of the delay pattern, including decking;

17) Reasons and conditions for each unscheduled blast;

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18) Wind velocity and direction; and

19) Weather conditions, including those which may cause possible adverse blasting effects.

b) Air blast and/or ground vibration recordings, or photographic copies thereof, where required, shall be kept at the mine site office for a period of three (3) years following the date of the blast, and shall be available for inspection by the Department and the public on request. The recordings shall include the following:

1) Maximum air blast and/or ground vibration levels recorded;

2) The exact location of the monitoring equipment, and its distance from the blast, and the date and time of the recording;

3) Name of the person and firm making the recording;

4) Name of the person and firm analyzing the recording. The recording shall be signed and dated by the person performing the analysis; and

5) The type of instrument, sensitivity, and calibration signal or certification of annual calibration. When the recordings required at Sections 1816.67(c) and 1816.67(g) are produced via digitized systems, the sampling rate of the digitizer, in samples per second, shall be stated.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1816.84 Coal Mine Waste: Impounding Structures

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Section 1816.81.

a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the Department that the stability of such a structure conforms to the requirements of this Part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Department in accordance with 62 Ill. Adm. Code 1780.25.

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b)

1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with Section 1816.49(a) and (c). Such structures may not be retained permanently as part of the approved post-mining land use.

2) ~~If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of 30 CFR 77.216(a), the combination of principal and emergency spillways shall be able to safely pass the one hundred (100) year, six (6) hour design precipitation event.~~ Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event as specified by Department after consideration of factors such as watershed size and characteristics necessary to ensure design in accordance with prudent engineering practices.

c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion in accordance with Section 1816.47. Inlets shall be protected against blockage.

d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that causes instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of Section 1816.43 and designed to safely pass the runoff from a one hundred (100) year, six (6) hour design precipitation event.

e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can be removed within a ten (10) day period.

f) For an impounding structure constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

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Section 1816.111 Revegetation: General Requirements

a) The permittee shall establish on regraded areas and on all other disturbed areas except areas where vegetative cover is inconsistent with the approved post-mining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan that is:

1) Diverse, effective, and permanent;

2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved post-mining land use and approved by the Department;

3) At least equal in extent of cover to the natural vegetation of the area; and

4) Capable of stabilizing the soil surface from erosion.

b) The reestablished plant species shall:

1) Be compatible ~~which~~ with the approved post-mining land use;

2) Have the same seasonal characteristics of growth as the original vegetation;

3) Be capable of self-regeneration and plant succession;

4) Be compatible with the plant and animal species of the area; and

5) Meet the requirements of the Illinois Noxious Weed Law (Ill. Rev. Stat. 1985, ch. 5, pars. 951 et seq.), The Illinois Seed Law (Ill. Rev. Stat. 1985, ch. 5, pars. 401 et seq.) and the Illinois Pesticide Act ~~of 1979~~ (Ill. Rev. Stat. 1985, ch. 5, pars. 801 et seq.)

c) In order to prevent soil erosion, the Department shall grant an exemption to the requirements of subsections (b)(2) and (b)(3) when the reestablished species will achieve a quick-growing, temporary stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

d) When the Department approved a cropland post-mining land use, the permittee shall be exempt from the requirements of subsections (a)(1), (a)(3), (b)(2), and (b)(3). The requirements of 62 Ill. Adm. Code 1823.15 apply to areas identified as prime farmland and those prime farmlands granted an exemption in accordance with 62 Ill. Adm. Code 1785.17(a)(5).

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(Source: Admended at ____ Ill. Reg. _____, effective _____)

Section 1816.116 Revegetation: Standards for Success

a)

1) Success of revegetation shall be judged in accordance with Sections 1816.116 and 1816.117.

2)

A) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with subsection (a)(2)(C).

B) The period of extended responsibility shall continue for a period of not less than five (5) full years. Vegetation parameters identified in subsection (a)(1) shall equal or exceed the approved success standard set forth in subsection (a)(3).

C) The Department shall approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved post-mining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

D) Rill and gully repair on cropland-capable reclaimed land will not be considered augmentation if an operator has an approved erosion control plan in place in the field pursuant to 62 Ill. Adm. Code 1823.14(g) or 1825.14(f), and shortly after the repair, the Department makes the following determinations:

i) the area is a minor erosional feature;

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ii) the area is small;

iii) the erosion is not expected to recur; and

iv) the area is stable.

E) Rill and gully repair on noncropland-capable land will not be considered augmentation if, shortly after the first rainfall event after the repair, the Department makes the following determinations:

i) the area is a minor erosional feature;

ii) the area is small;

iii) the erosion is not expected to recur; and

iv) the area is stable.

BF)

i) In those cases where a permittee augments any high capability cropland areas in order to achieve the revegetation success standards of subsection (a)(3)(C), the permittee shall apply the same or superior augmentation measures to all other high capability lands reclaimed using the same techniques and the five (5) year period of responsibility shall recommence. The Department shall waive augmentation if the other high capability areas have been previously augmented in a similar or superior manner or have met the revegetation success standards for cropland or the permittee can document a minimum of three (3) years of successful woody species establishment for forest products and wildlife habitat land uses as required by Section 1816.117(a). If the woody species have been planted less than three (3) years prior to the augmentation of the high capability cropland areas, the Department shall grant additional time to evaluate the success of the woody species planting.

ii) The five (5) year period of responsibility shall not recommence on areas where the operator has met the revegetation success standards of subsection (a)(3)(E).

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iii) If high capability cropland is augmented the Department shall retain sufficient performance bond at the time of phase II performance bond release to ensure the cost of similarly augmenting all other high capability lands, if required, is covered in the remaining bond amount.

3) Ground cover, and production, ~~or stocking~~ shall be considered equal to the approved success standard when they are not less than ninety (90) percent of the success standard. The sampling techniques for measuring success shall use a ninety (90) percent statistical confidence interval (i.e., one-sided t test with a 0.10 alpha error). Vegetative ground cover shall be measured using the technique set forth in 62 Ill. Adm. Code 1816.117(d). Standards for success shall be applied in accordance with the approved post-mining land use and, at a minimum, the following conditions:

A) The vegetative ground cover for areas previously disturbed by mining operations that were not reclaimed to the requirements 62 Ill. Adm. Code 1810 through 1828 and that are remined or otherwise redisturbed by surface coal mining operations, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion;

B) For areas to be developed for industrial, commercial or residential use less than two (2) years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion;

C) For areas designated in the approved reclamation plan as cropland, except those cropland areas subject to 62 Ill. Adm. Code 1823.15, success of revegetation of cropland areas shall be determined in accordance with subsection (a)(4). Crop production shall be considered successful if it is ninety (90) percent of that crop production required in subsection (a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, ~~provided crop years do not occur before the fourth year (inclusive)~~ except the first year of the five (5) year responsibility period. During the extended five (5) year responsiblity period, erosion from cropland must be minimized using equivalent or better management practices than surrounding unmined cropland. The five

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(5) year responsibility period shall begin after the last year of augmented seeding, fertilizing, or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing or crops grown in rotation. Crop production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading;

D) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of revegetation shall be determined on the basis of tree and shrub ~~stocking~~ populations and ground cover. The tree and shrub ~~stocking~~ population and ground cover shall meet the standards described in Section 1816.117; and

E) For areas designated as pasture and/or hayland or grazing land in the approved reclamation plan, except for erosion control devices and other structures (i.e., levees, ditches, waterways, impounding structures, etc.) success of revegetation (tons of grasses and/or legumes per acre) shall be determined in accordance with subsection (a)(4). Productivity shall be considered successful if it is ninety (90) percent of the productivity required in subsection (a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, ~~provided--that-both--production-years-do--not-occur before-the-fourth-year--(inclusive)~~ except the first year of the five (5) year extended responsibility period. Revegetation success shall also be determined in accordance with Section 1816.117 (a)(2). Production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading. On high capability land, the Department shall allow the use of one (1) successful year of corn production as a substitute for one (1) successful year of hay production under this subsection.

4) In order to use the Agricultural Lands Productivity Formula, Section 1816.Appendix A, to determine success of revegetation, the following shall apply;

A) The permittee shall submit annually, by February 15, a one (1) inch equals five hundred (500) feet (1:500) or larger scale drawing or aerial photograph delineating:

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i) Field boundaries, a field numbering scheme and the total acreage for each field which will be cropped to demonstrate proof of productivity for the coming crop year. The Department shall approve such submittal if the information is correct and accurate. Once field boundaries are established in a submittal, the boundaries shall not be changed without recommencing the responsibility period, unless the submittal is amended in accordance with subsection (a)(4)(A)(iii); and

ii) The crop (e.g., hay, wheat, corn, soybeans, sorghum, etc.) which will be grown on each field to demonstrate proof of productivity for the coming crop year.

iii) The permittee may amend its scale drawing in accordance with 62 Ill. Adm. Code ~~1788.12~~ 1774.13(b)(2) until July 15 of the submittal year. Each such amendment shall contain a written explanation of changes from the original submittal and include a map reflecting the changes.

iv) A field is an area of land reclaimed by a single reclamation technique that comprises either high capability land or prime farmland or limited capability pasture land. The size of the field and its boundaries are determined by such factors which include, but are not limited to, contour, non-cropped boundaries and size of farming equipment.

B) Fields identified in subsection (a)(4)(A) to be measured for success of revegetation for cropland shall be planted annually to a single approved crop. The sampling method of Section 1816. Appendix A shall apply. Soil and water conservation practices approved in the permit application including but not limited to grass waterways, diversion ditches, contour grass strips, and sedimentation ponds within the boundaries of a field shall be excluded from the sampling requirements of Section 1816.Appendix A and shall remain vegetated with permanent ground cover species, where appropriate, to conserve soil and water resources. Subject to rulemaking, the Department in cooperation with the Illinois Department of Agriculture may determine if a portion of a field is a representative sample of the entire field when technology has developed to make it possible through physical and chemical

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agronomic testing to demonstrate success of vegetation through soil surveys or when statistically valid sampling procedures are developed for determining success of revegetation based upon cropping and sampling a representative portion of the field.

C) Adjustments for abnormal growing conditions shall be made if such adjustments are certified by a crop adjuster certified to perform adjustments by the Federal Crop Insurance Corporation. At the request of a permittee, the Department of Agriculture shall make arrangements for such an appraisal or adjustment review. Before any such an appraisal or adjustment shall be arranged, the permittee shall file with the Illinois Department of Agriculture an agreement to pay the full cost of any crop adjustment or appraisal so requested.

D) The crops to be grown shall include those commonly grown on surrounding unmined cropland such as corn, soybeans, hay, sorghum, wheat, or oats. The Department may approve a hay crop use where this is a common use of unmined cropland in the surrounding area. Prime farmland and other cropland areas must include a minimum of one (1) successful year of corn and if the Department has approved its use a maximum of one (1) successful year each of hay and wheat crops.

b) The person who conducts surface mining activities shall:

1) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Department, to identify if remedial actions are necessary during the applicable period of liability specified in subsection (a); and

2) Permittees shall submit by ~~January 1~~ February 15 of each year a report of reclamation activities conducted during the previous calendar year using forms provided by the Department. Reclamation activities to be reported include but are not limited to crops used in temporary and permanent seedings, grasses and legumes planted, trees and shrubs planted, soil amendments added, and location and type of augmentation activities. The forms shall be submitted with a copy of the approved post-mining land use and capability map depicting the location of such activities. The map shall be planned as a continuous map so the reclamation activities conducted each year may be added and indicated on the map by the dates the activities were conducted.

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(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1816.117 Revegetation: Tree and Shrub Vegetation ~~Stocking for Forest Land~~

a) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of vegetation shall be determined on the basis of tree and shrub ~~stocking~~ population and vegetative ground cover. Such parameters are described as follows:

1) Trees and shrubs that will be used in determining the success of ~~stocking~~ vegetation and the adequacy of plant arrangement shall have utility for the approved post-mining land use. Tree and/or shrub ~~stocking~~ population shall be considered successful if it meets ~~is--ninety-(90)-percent-of-the-stocking~~ the population required in subsection (b) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) during the last year of the responsibility period. Trees and shrubs counted in determining such success shall be healthy, e.g. not demonstrating abnormal growth, coloring, leaf drop or disease. At the time of bond release such trees and shrubs shall be alive, and shall have been in place for at least three (3) growing seasons, i.e. three (3) years.

2) Vegetative ground cover shall not be less than required to achieve the approved post-mining land use and shall be adequate to control erosion.

3) Rock-~~areas,~~ Ppermanent roads ~~and-surface-water-drainage-ways~~, parking lots and similar impervious structures on the revegetated area shall not require ~~stocking~~ the planting of trees and shrubs or herbaceous ground cover.

4) For purposes of this Section, herbaceous species means grasses, leggumes and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the .combined aboveground parts of vegetation and the litter that is produced naturally on site.

5) For purposes of this Section, normal husbandry and conservation practices shall include pruning, disease, pest, vermin and herbaceous vegetation control including mowing, replanting and rill and gully repairs. The replanting of trees and shrubs in areas described in 62 Ill. Adm. Code 1816.116(a)(2)(C) shall be limited to 20% of the original approved planting rate during the first year of the

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responsibility period and 10% of the original approved planting rate during the second year of the responsibility period. The repair of rills and gullys shall be limited to those approved as a normal conservation practice under 62 Ill. Adm. Code 1816.116(a)(2)(C).

b) For areas where woody plants are used for fish and wildlife habitat (including shelter belts), or recreation land uses, the area shall have a minimum ~~stocking~~ population of two hundred and fifty (250) trees or shrubs per acre; where woody plants are used for forest products land uses, the area shall have a minimum ~~stocking~~ population of four hundred and fifty (450) trees or shrubs per acre.

c) For areas planted to trees or shrubs including wildlife habitat (including shelter belts), recreation, and forest products land uses, the sampling procedure for measuring ~~success of stocking~~ populations is described as follows:

1) The permittee shall submit a scale drawing or aerial photograph delineating the area(s) to be sampled and the total number of acres in each area. A one (1) inch equals five hundred (500) feet (1:500) or larger scale shall be used.

2) One of the following circular plot sizes shall be selected by the sample enumerator:

Plot Size/Acres	Radius/Feet
1/160	9.31
1/120	10.75
1/100	11.78
1/90	12.41
1/80	13.17
1/70	14.07
1/60	15.20
1/50	16.65
1/40	18.61
1/30	21.50
1/20	26.33
1/10	37.24
1/5	52.66
1/4	58.88

3) The number of plots needed to sample 2.5 percent of the area will be calculated employing the following formula:

Number of Plots equals 2.5 percent multiplied by Sample Area in acres divided by plot size.

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4) Based on the number of plots needed to be sampled and plot size, locate transect lines an equal distance apart throughout the area to be sampled. Position individual plots an equal distance apart along transect lines. Determine the total length of all transect lines combined and then divide by the total number of plots needed to be sampled. When an individual plot is positioned within sixty (60) feet of the boundary of the area to be sampled, the location of the plot shall be moved perpendicular to the transect line until the plot is sixty (60) feet from the boundary of the area to be sampled or the greatest distance possible where sixty (60) feet cannot be achieved.

5) Sample each plot for compliance with subsections (a)(1) and (b) and record live trees and/or shrubs and species.

6) Calculate ~~stocking~~ population levels as follows:

A) Average number of live trees and/or shrubs per plot equals total number of live trees and/or shrubs divided by number of plots; and

B) Number of live trees and/or shrubs per acre equals average number of live trees and/or shrubs per plot multiplied by plot size denominator.

7) Representatives of the Department or the Illinois Department of Conservation shall conduct all sampling.

d) Vegetative ground cover shall be measured by the following technique:

1) Twenty (20) random points shall be identified in the area to be tested.

2) A twenty (20) foot engineer's tape shall be extended directly south of each point. If the tape extends beyond the boundary of the area to be tested or extends into an area where herbaceous ground cover has been controlled with herbicides to minimize competition with woody plants, the tape shall be rotated in ninety (90) degree increments until the entire twenty (20) foot length is within the boundary of the area to be tested or area not treated with the herbicide.

3) A measurement shall be taken at each two tenths (.2) increment directly above or below the tape.

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4) Ground cover shall be determined to be present if any vegetation identified in Section 1816.117(a)(4) is measured at the increment.

5) A percentage of ground cover shall be established for the area tested by taking the total number of measurements where ground cover was determined to be present.

6) If the vegetative ground cover is adequate to control erosion, i.e. absence of rills and gulleys, and sufficient to achieve its approved post-mining land use, the percentage of ground cover determined by this technique shall be deemed successful.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

Section 1816.150 Roads: General

~~Surface--mining-activities--shall--be-conducted--to--insure-the--construction, maintenance,-and--postmining-conditions-of-roads--into-and-across-the--site-of operations-will-control-or-prevent--erosion-and-siltation,-pollution-of-water, damage-to-fish-and-wildlife-or-their-habitat,-or-public-or-private-property.~~

a) Road classification system.

1) Each road, as defined in 62 Ill. Adm. Code 1701.Appendix.A, shall be classified as either a primary road or an ancillary road.

2) A primary road is any road which is:

A) Used for transporting coal or spoil;

B) Frequently used for access or other purposes for a period in excess of six months; or

C) To be retained for an approved post-mining land use.

3) An ancillary road is any road not classified as a primary road.

b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust

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suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

7) Use nonacid- and nontoxic-forming substances in road surfacing.

c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size in accordance with current, prudent engineering practices, and any necessary design criteria established by the Department.

d) Location.

1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Department in accordance with applicable sections of 62 Ill. Adm. Code 1816.41 through 1816.43 and 1816.57.

2) Roads shall be located to minimize downstream sedimentation and flooding.

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e) Maintenance.

1) A road shall be maintained to meet the performance standards of this Section in accordance with prudent engineering and maintenance practices.

2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

f) Reclamation. A road not to be retained under an approved post-mining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

1) Closing the road to traffic;

2) Removing all bridges and culverts unless approved as part of the post-mining land use;

3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the post-mining land use and revegetation requirements;

4) Reshaping cut and fill slopes as necessary to be compatible with the post-mining land use and to complement the natural drainage pattern of the surrounding terrain;

5) Protecting the natural drainage patterns by installing dikes or cross-drains as necessary to control surface runoff and erosion; and

6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 62 Ill. Adm. Code 1816.22 and 1816.111 through 1816.117.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1816.151 Primary roads Primary roads shall meet the requirements of Section 1816.150 and the additional requirements of this Section.

a) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Department by a qualified registered professional engineer. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the

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report. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

b) Safety Factor. Each primary road embankment shall have a minimum static factor of 1.3.

c) Location.

1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Department as temporary routes during periods of road construction.

d) Drainage control. In accordance with the approved plan:

1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross-drains and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the Department as necessary to ensure proper drainage control design in accordance with prudent engineering practices.

2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

5) Natural stream channels shall not be altered or relocated without the prior approval of the Department in accordance with applicable sections of 62 Ill. Adm. Code 1816.41 through 1816.43 and 1816.57; and

6) Except as provided in Section 1816.151(c)(2), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other

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structures designed, constructed, and maintained using current, prudent engineering practices. The Department shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to steamflow.

e) Surfacing. Primary roads shall be surfaced with material approved by the Department as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Section 1816.APPENDIX A Agricultural Lands Productivity Formula

SOIL MASTER FILE

The Soil Master File of the Agricultural Lands Productivity Formula contains a comprehensive list of the soil mapping units currently recorded in Illinois. The Soil Master File provides the soil mapping unit number, common mapping name, and the high level of management yields for corn, soybeans, wheat, oats and mixed hay. Section 1816.Table E is the Soil Master File.

Additional components of the Soil Master File are as follows:

1. County number - identifies soils unique to a county. County number also distinquishes between soils with the same name in different counties but with unique soil properties and yields. County numbers are identified in Section 1816.Table C County Numbering System.

2. Variance code - physical conditions which would cause similar soil types to produce radically different yields. Variance code is explained in Section 1816.Table B Soil Variance Code.

3. Switch code - identifies a point at which a particular soil at a given slope and/or erosion category becomes either a new soil, a complex soil or moves from a favorable to unfavorable subsoil. The alphanumeric switch code is the new slope and erosion code.

4. Subsoil type - either #1 favorable, or #2 unfavorable subsoil condition. Percent of adjustment that will be applied to both the high management yield in subsoil conditions provided in Section 1816.Table A - Subsoil Adjustments.

5. Slope and erosion - this category provides adjusted high management yields for slope and erosion groups for each soil series for each crop in the Agricultural Lands Productivity Formula.

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COUNTY CROPPED ACREAGE FILE

The Agricultural Lands Productivity Formula requires that the number of cropped acres by soil mapping unit be calculated for each county. These calculations are generated by computer using the following formula:

Total acres per soil type per county	x	percent of total acreage cropped	=	acres per soil type cropped

The percent of total acreage cropped per soil type will be provided by County Soil and Water Conservation Districts. Any changes to these figures must be approved by the County Soil and Water Conservation District Board with a certified copy of all changes submitted by August 15 of each year to the Illinois Department of Agriculture.

Section 1816.Table F - County Cropped Acreage File reflects the total acres of each soil type per county, percent of acreage cropped, and the computed figure of total cropped acres by soil type in each county. The "total cropped acres" figures are carried forward to the County Average Yield File.

COUNTY AVERAGE YIELD FILE

The next procedure of the Agricultural Lands Productivity Formula is to equate annual county crop yield data to the soils derived in the "County Cropped Acreage File". Section 1816.Example A and the following paragraphs summarize the procedure for calculating the crop yield for each soil mapping unit.

Column A reflects the soil mapping units as they appear on a county by county basis.

Column B is the number of acres cropped in a county per soil type as recorded in the County Cropped Acreage File. These cropped acreage figures are then added together to give a total number of acres cropped for the county.

Column C is the percent of the acreage represented by each soil type when compared with the total in Column B (Column B = total acres in soil mapping unit times the percent of acres cropped in the county by mapping unit).

The number of acres planted in grain (Column D) is calculated by multiplying the percent of each soil mapping unit in the county (Column C) by the total acres in the county harvested for corn, soybeans, wheat, oats, and mixed hay. (See asterisk in Section 1816.Example A). The purpose of this calculation is to estimate the number of acres harvested from each of the particular soil mapping units. It is assumed that 25% of the total corn,

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soybean, wheat, oat and mixed hay acreage was planted on that particular soil mapping unit. Therefore, the "grain acres" are distributed on the soil mapping units based upon the percent of acres in each soil mapping unit.

Column E is the adjusted yield information for each crop which comes from Section 1816.Table E - Soil Master File.

Column F is a derived high 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 high level management yield is used. The purpose of using the high management production is to derive a weighted average high management yield; which is, the total high management production (Column F) divided by the total grain acres in the county (Column D). The weighted high management yield figure will be used to derive a "factor" as described below:

$$\text{Factor} = \frac{\text{Official County Crop Yield}}{\text{Weighted High Management Yield}}$$

Column G results from the multiplication of the above factor times the high level management yield of each soil mapping unit (Column E). The result is a yield which represents the average yield in either bushels per acre or tons per acre in the county for that year and crop.

PERMIT SPECIFICS
YIELD STANDARD

After completing calculations for the projected yield of the test year in question, a yield standard for each permit area must be calculated. The yield standard, which is also applicable to high capability standards of Section 1816.116(a)(3)(C) will be calculated in the following manner:

The number of prime farmland acres in each soil mapping unit will be divided by the total prime farmland acres in the mine permit area to obtain a weighted proportion for each soil type. The weighted proportion of each prime farmland soil mapping unit in the permit area, relative to the total prime farmland acres in the permit area, will be multiplied times the projected yield for the pre-mining soil types. The weighted final yield for each prime farmland soil type in a mining permit area will be added together and the total becomes the yield requirement for the permit area.

AGRICULTURAL LANDS PRODUCTIVITY FORMULA
SAMPLING METHOD

The sampling methodology that the Illinois Department of Agriculture or the Illinois Department of Mines and Minerals will use to gather the data needed to determine if productivity has been returned to reclaimed mine land is summarized below for corn, soybeans, wheat, oats, sorghum, and mixed hay.

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This sampling methodology requires an operator to submit by February 15 of each year, a scale drawing or aerial photo delineating specific field boundaries and type of crop which is to be sampled for proof of productivity for the current crop year. Each scale drawing and photo submitted shall include a field numbering scheme and the total acreage for each field on which sampling is being requested. In addition, the scaled drawing shall be no less than 1 inch equals 500 feet (1:500) or greater than 1 inch equals 100 feet (1:100). The February 15 annual submittal may be amended by the operator until July 15. Each such amendment shall contain a written explanation of changes from the original submittal and an aerial photograph or scaled drawing reflecting the corrected sampling submittal.

The determination of sample points within a specific field will be made on the basis of a grid overlay scheme with the location of sample points on the grid randomly generated by computer. An intentional bias of fifty feet (50') will be introduced to all field boundaries to remove the potential that sampling points may fall in turn around areas, or areas where contiguous soil reconstruction may cause field boundaries to not be indicative of whole field productivity.

The minimum acceptable number of samples to be taken relative to field size is shown in Section 1816.Table D sample points per crop acres, with fields of four acres or less to be sampled in their entirety with yields determined by harvest weight. Sample selections will take place using the following guidelines.

The Illinois Department of Agriculture may elect to increase the minimum number of acceptable sample points per field acres. Some factors which will be considered in determining whether to increase the number of sample points are as follows, but not limited to:

1. Operator requests additional sample points for specific fields.

2. The use of different hybrids in one field.

3. Contour changes within one field which would alter a yield.

4. A coefficient of variation greater than 15%.

The Department shall request the operator to verify yields by harvest weight (e.g., scale tickets) for reasons, including but not limited to:

1. Vertification of random sampling results.

2. Availability of sample enumerators.

3. Backlog of sample processing at the IDOA lab.

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In each such case, the certified harvest yield adjusted, to optimum moisture content, will become the comparison yield for the Agricultural Lands Productivity Formula target yield.

CORN SAMPLING TECHNIQUE

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, place a stake immediately adjacent to the closest corn stalk to the toe of your shoe. Measure 15 feet of the corn row starting at the first stake and placing a second stake at the 15 foot mark. Move to the next adjacent corn row, measure and stake a second 15 foot section in the same manner as the first row. One sample unit will equal two fifteen foot corn row sections.

Step 4 - Determine the 3rd and 4th ears of the first row starting with the first stalk of corn. Tag these ears with a rubber band. If there are less than four ears in the first row, the last ear and the next to last ear should be tagged. In the case where a stalk has more than one ear, count the top ear first. (Note: An ear of corn is defined as a cob having at least one kernel. The tagged ears will be used to determine the moisture content, and at least 250 grams of grain are needed. If it does not appear that the 3rd and 4th ears will supply 250 grams of grain for a moisture test, then the 5th, 6th and/or 7th ear should be included until at least 250 grams of corn is collected).

Step 5 - Husk all ears in Row 1 within the fifteen foot segment of the sample. Husk the ears and snap the skank off as cleanly as possible. Be sure to include any ears tagged for moisture testing.

Step 6 - Weigh the husked ears using a balance scale - obtain field weight in pounds.

Step 7 - After weighing, put ears tagged for moisture testing into polyethylene bags and seal. Mark the bag with the appropriate field number (as supplied by the mine operator), and sample identification number.

Step 8 - Measure on a perpendicular line from the stalks in row one (1) to the stalks in row five (5). Divide this measured distance by four (4) to determine the average row width.

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Step 9 - Repeat Steps 3 through 8 for each additional random sampling point coordinate.

Step 10 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of corn samples. Gross yield is determined by deducting the adjustment for moisture content of shelled corn from the harvest weight. Moisture content of the grain sample will be determined by lab analysis.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

$$\text{Gross Yield Per Acre (bu/ac)} = \frac{A \times B \times C}{D} \;/\; (E \times 56 \text{ lbs/bu})$$

where: A = Field weight of husked ears of corn from 15 feet of row x 2 (2 Rows x 15 feet);

B = Weight of shelled grain at time of moisture test;

C = Percent moisture in grain corrected to 15.5%;

$$= (1.0 - \frac{\text{(Moisture content of shelled corn)}}{100}) \;/.845$$

D = Weight of ears of Corn used for moisture determination;

E = Row Factor

Area or percent of Acre Sampled with 30 feet of Row (2 rows x 15 feet)	
	30" = 0.001722
	36" = 0.002066
	38" = 0.002181
	40" = 0.002295

and .845 = The standard moisture content conversion factor of corn per bushel (1.0 - .155).

After calculation of the gross yield, the Harvest Loss will be

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substracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from a field. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

SOYBEAN SAMPLING TECHNIQUE BROADCAST BEANS

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame so that it touches the toe of your shoe, crossing the crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 3.0 foot sampling tines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked), and at a right angle to the original frame position. (Note: If at any time the point of a tine is restricted by a soybean plant, slide the soybean frame toward the starting point far enough for the point of the tine to clear the plant). Repeat this procedure to lay out the other two sides of the sampling square, using the opposite corner of the original frame position to find the other two sides.

Step 4 - Strip all the soybean pods from all the plants in the 9 square feet sampling area. Pick up any loose pods or beans found on the ground. Deposit all the pods, beans and blank pods, into a paper sack. Mark the sack with the appropriate field number (as provided by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is below 250 grams for the moisture test, grain of known moisture content as is necessary to reach the test weight will be added to the sample so that moisture tests can be made).

Step 5 - Repeat steps 3 and 4 for each additional random sampling point coordinate.

Step 6 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

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The following method will be used for determination of gross yield of soybean samples. Gross yield is determined by deducting the adjustment for moisture content of the soybean sample from the harvest weight. Moisture content of the grain sample will be determined by lab analysis.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

$$\text{Gross Yield Per Acre = bu/ac} = \frac{\text{Total weight of all beans in 9 sq. ft. (in grams)} \times \text{Conversion Factor} \times (1.0 - (\%\ \text{moisture}/100))}{.875}$$

$$\text{Where the conversion factor} = \frac{43560\ \text{sq. ft./ac.}}{453.6\ \text{gms/lb} \times 60\ \text{lbs/bu} \times 9\ \text{sq. ft.}}$$

and .875 = The standard moisture content conversion factor of soybeans per bushel (1.0-(12.5%/100)).

After calculation of the gross yield, the Harvest Loss will be subtracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from the yield. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

SOYBEAN SAMPLING TECHNIQUE
DRILLED OR PLANTED BEANS

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual locations.

Step 3 - After taking the last of the required paces to the first sampling point, mark the closest plant to the toe of your foot. Place a flag at the point that you have just marked. From the point of this flag, and in the direction of travel from where the last pace was counted, measure a distance of six feet of plant row and place a flag at the six foot mark. Starting from the row just identified, measure the distance across five rows. This distance, from row one to row five, divided by four row

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spaces gives the average row width.

Step 4 - Strip all the soybean pods from all the plants in the 6 foot sample row. Pick up any loose pods or beans found on the ground at the base of these plants. Deposit all the pods, beans and blank pods, into a paper sack. Mark the sack with the appropriate field number (as provided by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is too small for the moisture test, sufficient grain of known moisture content will be added to the sample so that moisture tests can be made).

Step 5 - Repeat steps 3 and 4 for each additonal random sampling point coordinate.

Step 6 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of soybean samples. Gross yield is determined by deducting the adjustment of moisture content of the soybean sample from the harvest weight. Moisture content determinations will be made by the Illinois Cooperative Crop Reporting Service.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

$$\text{Gross Yield Per Acre (bu/acre)} = \frac{A \times B}{C \times D \times E}$$

Where A = Weight of harvested grain from 6 feet of row

B = Percent moisture in grain corrected to 12.5% =

$$\frac{(1.0 - (\%\ \text{moisture in shelled beans}/100\%))}{0.875}$$

C = Number of grams per pound = 453.6

D = Correction factor for row spacing on drilled or planted beans

= Average row width ~~across 5 rows (feet)~~ (4 row spaces)/12

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inches/ft)
x 6 feet of row
43560 sq. ft./acre

E = Standard weight of 1 bushel of soybeans = 60

After calculation of the gross yield, the Harvest Loss as calculated by Illinois Cooperative Crop Reporting Service will be subtracted from the gross yield to obtain a net yield per sample. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

WHEAT SAMPLING TECHNIQUES

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample location.

Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame so that it touches the toe of your shoe, crossing the crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 1.8 feet samples tines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked) and at a right angle to the original frame position. Repeat this procedure to lay out the other two sides of the sampling square using the opposite corner of the original frame position to find the other two sides.

Step 4 - Clip all wheat heads from within the square outlined by the sampling frame. The wheat heads should be clipped approximately 1/2 inch below the bottom of the head. Deposit all the collected wheat heads into a paper sample sack. Mark the sack with the approximate field number (as supplied by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is below 250 grams for the moisture test, grain of known moisture content will be added to the sample so that moisture tests can be made).

Step 5 - Repeat steps 3 and 4 for each additional random sampling point coordinate.

Step 6 - Send or deliver to the Illinois Department of Agriculture

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grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of wheat samples. Gross yield is determined by deducting the adjustment for moisture content of the wheat sample from the harvest weight. Moisture content of the grain sample will be determined by lab analysis.

Gross Yield - Harvest Weight adjusted for moisture content Included below for reference is the Gross Yield formula and an explanation of its components.

$$\text{Gross yield Per Acre bu/ac} = \frac{\text{Sample wt. of wheat (in grams)} \times (1.0-(\%\ \text{moisture}/100)) \times \text{conversion factor}}{.880}$$

$$\text{Where the conversion factor} = \frac{43560\ \text{sq. ft/ac}}{60\ \text{lbs/bu} \times 453.6\ \text{gms/lb} \times 3.24\ \text{sq. ft. acre}} = .4940\ \text{bu/gm}$$

and .88 = The standard moisture content conversion factor of wheat per bushel (1.0-(12%/100)).

The following formula shall be used where rows are discernible.

$$\text{Gross yield Per acre bu./acre} = \text{Sample wt. of wheat (in grams)} \times (1 - (\%\ \text{moisture}/100\%)) \times \text{conversion factor})/.880$$

$$\text{Where the conversion} = \frac{(45360\ \text{sq. ft./ac.})/(60\ \text{lbs./bu.} \times 453.6\ \text{gms./lb.} \times \text{number of rows harvested} \times 1.8\ \text{ft.} \times \text{average row spacing (ft.)})}$$

and .880 = The standard moisture content conversion factor of wheat per bushel (1 - (12%/100%)).

The row spacing will be determined by measuring across 5 row spaces to obtain an average.

After calculation of the gross yield, the Harvest Loss will be subtracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from a field. The net yield determinations for each sample will be averaged together to obtain a

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yield figure for the entire field being evaluated for proof of productivity.

OATS SAMPLING TECHNIQUE

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample location.

Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame so that it touches the toe of your shoe, crossing the crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 1.8 feet sampling tines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked) and at a right angle to the original frame position. Repeat this procedure to lay out the other two sides of the sampling square using the opposite corner of the original frame position to find the other two sides.

Step 4 - Clip all oat heads from within the square outlined by the sampling frame. The oat heads should be clipped approximately 1/2 inch below the bottom of the head.

Deposit all the collected oat heads into a paper sample sack. Mark the sack with the appropriate field number (as supplied by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is below 250 grams for the moisture test, grain of known moisture content will be added to the sample so that moisture tests can be made).

Step 5 - Repeat steps 3 and 4 for each additional random sampling point coordinate.

Step 6 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of oat samples. Gross yield is determined by deducting the harvest weight. Moisture content of the grain samples will be determined by lab analysis.

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Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

$$\text{Gross yield Per Acre bu/ac} = \frac{\text{Sample wt. of oats (in grams)} \times (1.0-(\%\ \text{moisture}/100\%))}{0.850} \times \text{conversion factor}$$

$$\text{Where the conversion factor} = \frac{43560\ \text{sq. ft/ac}}{32\ \text{lbs/bu} \times 453.6\ \text{gms/lb} \times 3.24\ \text{sq. ft.}} = .9262\ \frac{\text{bu/gm}}{\text{acre}}$$

and .85 = The standard moisture content conversion factor of oats per bushel (1.0-(15%/100)).

The following formula shall be used where rows are discernible.

$$\text{Gross yield Per acre bu./acre} = \text{Sample wt. of oats ((in grams) x (1 - (\% moisture/100\%)) x conversion factor)/.850}$$

$$\text{Where the conversion} = \frac{(45360\ \text{sq. ft./ac.})}{(32\ \text{lbs./bu.} \times 453.6\ \text{gms./lb.} \times \text{number of rows harvested} \times 1.8\ \text{ft.} \times \text{average row spacing (ft.)})}$$

and .850 = The standard moisture content conversion factor of oats per bushel (1 - (15%/100%)).

The row spacing will be determined by measuring across 5 row spaces to obtain an average.

After calculation of the gross yield, the Harvest Loss will be subtracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from a field. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

SORGHUM SAMPLING TECHNIQUE

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

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Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, place a stake immediately adjacent to the closest sorghum plant to the toe of your shoe. Measure ten (10) feet of the plant row starting at the first stake and placing a second stake at the ten (10) foot mark. Move to the next adjacent plant row, measure and stake a second ten (10) foot section in the same manner as the first row. One sample unit will equal two (10) ten foot sorghum row sections.

Step 4 - Clip all grain heads in Row 1 within the ten (10) foot segment of the sample unit.

Step 5 - Weight the clipped grain heads using a balance scale - obtain field weight to the nearest tenth (0.1) of a pound.

Step 6 - Clip the first five grain heads and the last five grain heads in Row 2 to be used for moisture determination. Place any grain heads collected for moisture determination into sealed polyethylene bags. Mark the bags with the appropriate field number (as supplied by the mine operator), and sample identification number.

Step 7 - Measure on a perpendicular line from the plants in row one (1) to the plants in row five (5). Divide this measured distance by four (4) to determine the average row width.

Step 8 - Repeat Steps 3 through 7 for each additional random sampling point coordinate.

Step 9 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of sorghum samples. Gross yield is determined by deducting the adjustment for moisture content of the threshed grain from the harvest weight. Moisture content of the grain samples will be made by lab analysis.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

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Gross Yield bu/ac = $\frac{A \times B \times C}{D}$ / E x 56 lbs/bu

Where: A = Field weight of grain heads of sorghum from ten (10) feet of row x 2 (2 rows x 10 feet);

B = Weight of threshed grain at time of moisture test;

C = Percent moisture in grain corrected to 13.0%;

= (1.0 - $\frac{\text{(Moisture content of threshed grain))}}{100}$ /0.870

D = Weight of grain seeds used for moisture determination;

E = Row factor
Area or percent of Acre Sampled with 20 feet of Row (2 rows x 10 feet)

28"	= .001070
30"	= .001148
36"	= .001377
38"	= .001455
40"	= .001529

and .870 = The standard moisture content conversion factor of sorghum per bushel (1.0 -.130)

MIXED HAY SAMPLING TECHNIQUE

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinate in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame perpendicular to the toe of your shoe, where applicable, crossing crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 3 feet sampling tines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked) and at a right angle to the original frame position. Repeat this procedure to lay out the other two sides of the sampling square using the opposite corner of the original frame position to locate the other two sides. In all cases, the layout of the sample area shall be consistent for each randomly identified sample point.

Step 4 - Clip all hay stalks from within the square outlined by the

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sampling frame. The hay stalks should be uniformly clipped to an approximate height of two (2) inches above ground level.

Step 5 - Deposit all of the collected hay sample into a suitable sample sack/container. Mark the sack/container with the appropriate field number (as supplied by the mine operator), and sample identification number. Secure the sample sack/container to prevent any sample loss. (Note: If the sample weight is too large for handling by lab personnel, the sample may be quartered until an adequate representative sample for moisture testing is obtained.)

Step 6 - Repeat Steps 3 and 4 for each additional random sampling point coordinate.

Step 7 - Send or deliver to the Illinois Department of Agriculture any hay sample collected for moisture analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

* If a field moisture meter is used, steps 5 and 7 shall be eliminated and the following explanations for items A and D will be substituted.

A. Dry matter weight = harvest weight - percent moisture content determined by field moisture tests.

D. Percent moisture in hay at time of harvest determined by field moisture test.

The following method will be used for determination of gross yield of mixed hay samples. Gross yield is determined by deducting the adjustment for moisture content of the mixed hay sample from the harvest weight. Moisture content of mixed hay samples will be determined by lab analysis.

Gross Yield = Harvest weight adjusted for moisture content

Gross yield (Tons/Acre) = $\frac{A \times \frac{1}{B \times F}}{C}$

Where: A = ~~Oven-dry-weight--of-harvested-hay.~~ Field weight or harvested weight of mixed hay.
B = ~~Sample-size--(FT2)-43560--FT2/acre.~~ Plot size (sq. ft./43560 sq. ft./ac.) or number of acres.
C = ~~Conversion-factor--from-lbs-harvested--to-tons-(i.e.-1---ton-=-2000-lbs)~~ Conversion factor from lbs. to tons.
D = ~~Percent-moisture-in-hay-at-time-of-harvest-=-Wet-wt----oven-dry-wt.-x-100-=-%-H20~~

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~~Oven-dry--wt.~~ Dry matter content of harvested hay (100% - % moisture in hay.)

E = ~~Approximate-%--moisture-in--mixed-baled-hay--=-15%~~ Dry matter content of hay standard (100% - 15%)

F = D/E = $\frac{\text{100\% - \% H20 in Hay at Time of Harvest}}{\text{15\%}}$

The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity. The annual harvest will be determined by the cumulative yields of each cutting.

SPECIAL PROBLEMS IN SAMPLE LAYOUT

1. It is possible for a sample grid coordinate to fall on areas within the field boundary which were not planted to crops (i.e., grass waterway, roadway, etc.) When this situation occurs, stop the pace count at the start of such an area and resume the count on the other side of the area.

2. If a blank area is crossed which was planted to crops, the pace count should be continued through this area. Usually such areas are due to poor germination, insects, standing water, etc. (if the sample area falls in this planted area which is blank, then a zero yield is established).

3. If a sample coordinate falls partly in a blank area which was not planted for harvest, move the sample area ahead until it is wholly on acreage planted to the crop being sampled. The sample point should begin one pace from the edge of the blank area.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Permanent Program Performance Standards--Underground Mining Activities

2) Code Citation: 62 Ill. Adm. Code 1817

3)

Section Number:	Proposed Action:
1817.49	Amended
1817.68	Amended
1817.84	Amended
1817.116	Amended
1817.117	Amended
1817.150	Amended
1817.151	New Section

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On August 29, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE), by final rule, instructed the Illinois Department of Mines and Minerals (Department) to submit proposed amendments designed to correct defects identified in Illinois' rules. See 55 Fed. Reg. 35301 (August 29, 1990).

On September 20, 1989, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.

The following discussion describes the Department's proposed amendments to Part 1817 in response to these OSMRE directives and agency concerns.

Section 1817.49 sets forth the Department's performance standards for temporary and permanent impoundments constructed to facilitate underground coal mining operations. The proposed amendments to subsection (a)(4) provide an alternative to the performance standards in subsection (a)(3) by specifying that compliance with the U.S. Soil Conservation Service's standards satisfies the Department's performance standards for certain impoundments. The proposed amendments will provide a design standard alternative to the current performance standard safety factor requirements. Such design standards are specifically provided for at 53 Fed. Reg. 43584 (October 27, 1988). The proposed amendment to

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subsection (b)(9) corrects a typographical error.

Section 1817.68 sets forth the Department's requirements for compiling and maintaining records of blasting operations. The Department proposes to amend subsection (a) by adding weather conditions to the list of data required to be maintained by operators in their records of blasting operations. The proposed amendment requiring that recorded blast data address weather conditions satisfies OSMRE's directive. See 55 Fed. Reg. 35301 (August 29, 1990).

Section 1817.84 sets forth the Department's requirements regarding coal mine waste impounding structures. The proposed amendment to subsection (b)(2) requires that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event, rather than a 100 year, 6-hour precipitation event. The proposed addition of subsection (f) specifies that, for impounding structures constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event must be removed within the 10-day period following each occurrence of that event. The proposed amendments serve to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 817.84.

Section 1817.116 sets forth the Department's requirements for revegetation success standards. Proposed new subsections (D) and (E) define the extent to which rill and gully repairs can be considered nonaugmentative. These proposed amendments are in response to OSMRE's directive in their September 20, 1989 letter to the Department. The proposed amendment to subsection (a)(3) establishes a method for evaluating revegetation success of ground cover, in accordance with OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3)(C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. The amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3)(D) changes the word "stocking" to "population" in order to enhance clarity and avoid confusion.

The first proposed amendment to subsection (a)(3)(E) specifies that for revegetation success purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period. The amendment is in response to OSMRE's September

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20, 1989 directive to the Department.

The proposed new last sentence of subsection (a)(3)(E) allows one (1) successful year of corn production to be used as a substitute for one (1) successful year of hay production, for revegetation success purposes, on high capability land. The purpose of this amendment is to maximize land use management alternatives on cropland capable land.

The proposed amendment to subsection (b)(2) changes the deadline date for reclamation activity report submittals to coincide with a related submittal required under 62 Ill. Adm. Code 1816.116(a)(4).

Section 1817.117 sets forth the Department's requirements for tree and shrub vegetation. The proposed terminology changes in subsection (a) from "stocking" to "population" or "vegetation" enhance clarity and avoid confusion.

The proposed amendment to subsection (a)(1) requires that for revegetation success purposes, survival counts be taken during the last year of the five (5) year responsibility period. Such counts could previously have been taken in the third year of the five (5) year responsibility period. The proposed amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3) responds to OSMRE's September 20, 1989 directive by making clear that ground cover is not required on impervious structures only.

Proposed new subsection (a)(5) defines what are considered normal husbandry and conservation practices in accordance with OSMRE's September 20, 1989 letter to the Department.

The proposed terminology changes in subsections (b) and (c) enhance clarity and avoid confusion.

Proposed new subsection (d) establishes a technique for measuring the revegetative success of ground cover in accordance with OSMRE's September 20, 1989 directive.

Section 1817.150 sets forth the Department's requirements for the protection of roads. The proposed rewrite of Section 1817.150 establishes classification criteria for mine roads, performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with underground coal mining operations, environmental protection criteria for the design, construction and reconstruction of roads, and requirements for the location and maintenance of roads associated with underground coal mining operations. The proposed rewrite of Section 1817.150 serves

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to bring Illinois' regulations into conformance with OSMRE's counterpart regulation, 30 CFR 817.150.

Proposed new Section 1817.151 establishes performance standards for primary roads in addition to those contained at Section 1817.150. Specifically, Section 1817.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing. Proposed new Section 1817.151 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 817.151.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? Yes

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

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12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have gross annual sales of less than $4 million.

C) Reporting, bookkeeping or other procedures required for compliance:
Section 1817.68(a) requires mine operators to add wind velocity and direction and weather conditions to the list of data required to be maintained in their records of blasting operations.

Section 1817.116(a)(3) requires that vegetative ground cover be measured using the technique set forth in proposed Section 1817.117(d) for revegetation success purposes.

Section 1817.150 establishes more extensive performance standards relating to roads than previously existed.

Section 1817.151 establishes additional performance standards for primary roads and requires professional engineering skills and report certifications.

D) Types of professional skills necessary for compliance:
Professional Engineer

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER 1: DEPARTMENT OF MINES AND MINERALS

PART 1817
PERMANENT PROGRAM PERFORMANCE STANDARDS--
UNDERGROUND MINING OPERATIONS

Section
1817.11 Signs and Markers
1817.13 Casing and Sealing of Exposed Underground Openings: General Requirements
1817.14 Casing and Sealing of Underground Openings: Temporary
1817.15 Casing and Sealing of Underground Openings: Permanent
1817.21 Topsoil: General Requirements (Repealed)
1817.22 Topsoil and Subsoil
1817.23 Topsoil: Storage (Repealed)
1817.24 Topsoil: Redistribution (Repealed)
1817.25 Topsoil: Nutrients and Soil Amendments (Repealed)
1817.41 Hydrologic Balance Protection
1817.42 Hydrologic Balance: Water Quality Standards and Effluent Limitations
1817.43 Diversions
1817.44 Hydrologic Balance: Stream Channel Diversions (Repealed)
1817.45 Hydrologic Balance: Sediment Control Measures
1817.46 Hydrologic Balance: Siltation Structures
1817.47 Hydrologic Balance: Discharge Structures
1817.48 Hydrologic Balance: Acid - Forming and Toxic - Forming Materials (Repealed)
1817.49 Impoundments
1817.50 Hydrologic Balance: Underground Mine Entry and Access Discharges (Repealed)
1817.52 Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1817.53 Hydrologic Balance: Transfer of Wells (Repealed)
1817.55 Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1817.56 Post - Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities
1817.57 Hydrologic Balance: Stream Buffer Zones
1817.59 Coal Recovery
1817.61 Use of Explosives: General Requirements
1817.62 Use of Explosives: Pre - Blasting Survey
1817.64 Use of Explosives: General Performance Standards
1817.65 Use of Explosives: Surface Blasting Requirements (Repealed)
1817.66 Use of Explosives: Blasting Signs, Warnings, and Access Control
1817.67 Use of Explosives: Control of Adverse Effects
1817.68 Use of Explosives: Records of Blasting Operations
1817.71 Disposal of Excess Spoil: General Requirements
1817.72 Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills

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1817.73 Disposal of Underground Development Waste and Excess Spoil: Head-of-Hollow Fills (Repealed)
1817.74 Disposal of Excess Spoil: Durable Rock Fills
1817.75 Disposal of Excess Spoil: Preexisting Benches
1817.81 Coal Mine Waste: General Requirements
1817.82 Coal Processing Waste Banks: Site Inspection (Repealed)
1817.83 Coal Mine Waste: Refuse Piles
1817.84 Coal Mine Waste: Impounding Structures
1817.85 Coal Processing Waste Banks: Construction Requirements (Repealed)
1817.86 Coal Processing Waste: Burning (Repealed)
1817.87 Coal Mine Waste: Burning and Burned Waste Utilization
1817.88 Coal Processing Waste: Return to Underground Workings (Repealed)
1817.89 Disposal of Noncoal Mine Wastes
1817.91 Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
1817.92 Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
1817.93 Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
1817.94 Coal Processing Waste: Time Requirement for Completion of Covering (Repealed)
1817.95 Stabilization of Surface Areas
1817.97 Protection of Fish, Wildlife and Related Environmental Values
1817.99 Slides and Other Damage
1817.100 Contemporaneous Reclamation and Subsidence Control
1817.101 Backfilling and Grading: General Requirements
1817.102 Backfilling and Grading: General Grading Requirements
1817.103 Backfilling and Grading: Covering Coal and Acid- and Toxic-forming Materials (Repealed)
1817.106 Backfilling and Grading: Previously Mined Areas
1817.107 Backfilling and Grading: Steep Slopes
1817.111 Revegetation: General Requirements
1817.112 Revegetation: Use of Introduced Species (Repealed)
1817.113 Revegetation: Timing
1817.114 Revegetation: Mulching and Other Soil Stabilization Practices
1817.115 Revegetation: Grazing (Repealed)
1817.116 Revegetation: Standards for Success
1817.117 Revegetation: Tree and Shrub ~~Stocking~~ Vegetation
1817.121 Subsidence Control
1817.122 Subsidence Control: Public Notice
1817.124 Subsidence Control: Surface Owner Protections (Repealed)
1817.126 Subsidence Control: Buffer Zones (Repealed)
1817.131 Cessation of Operations: Temporary
1817.132 Cessation of Operations: Permanent
1817.133 Post - Mining Land Capability
1817.150 Roads: General
1817.151 Primary Roads
1817.180 Utility Installations

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1817.181 Support Facilities
1817.182 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area
1817.190 Affected Acreage Map

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8230; amended at 9 Ill. Reg. 13315, effective October 10, 1985; amended at 10 Ill. Reg. 9606, effective July 1, 1986; amended at 11 Ill. Reg. 8250, effective July 1, 1987; amended at 14 Ill. Reg. 11855, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1817.49 Impoundments

a) The requirements of this subsection apply to both temporary and permanent impoundments.

1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 (198990) and this Section. 30 CFR 77.216 does not include any later editions or amendments. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1784. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.

2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1784.16(a) as designed to meet the requirements of this Part using current, prudent engineering practices. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

3) Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2~~.~~, or

4) The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to

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structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), are contained in U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs", October 1985. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds", April 1987. Technical Release No. 60 and Practice Standard 378 are hereby incorporated by reference and do not include later editions or amendments.

45) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

56) Foundations.

A) Foundations and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.

B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

67) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

78) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

89) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).

910) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced

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in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.

A) Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.

B) All other impoundments shall be inspected at least weekly during construction and upon completion of construction. The qualified registered professional engineer shall submit to the Department within thirty (30) days after each inspection, a sealed report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations.

C) A copy of the reports required in subsections (a)(9)(A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.

~~10~~11) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and these regulations. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed examination report shall be submitted to the Department within 30 days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 62 Ill. Adm. Code 1800.40. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection, following approval by the

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Department:

A) Impoundments that are completely incised;

B) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; and

C) Impoundments that do not facilitate mining or reclamation including, but not limited to, sewage lagoons, landscaping ponds, pools or wetlands in replaced stream channels, existing impoundments not yet used to facilitate mining, ephemeral waterbodies, active mining pits and differential settlement pools.

~~11~~12) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

1) The size and configuration of the impoundment is adequate for its intended purposes.

2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1817.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section 1817.42.

3) The water level will be sufficiently stable and be capable of supporting the intended use.

4) Final grading will provide for adequate safety and access for proposed water users.

5) The impoundment will not result in the diminution of the

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quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

6) The impoundment will be suitable for the approved post-mining land use.

7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

A) Runoff from above the slope shall be diverted to erosion free outlets.

B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period.

8) Embankment ponds, those having embankment heights of three (3) feet or greater above natural ground elevation, shall have outslopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less.

9) Permanent impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil and type.

10) In lieu of the combination principal and emergency spillway requirements of Section 1817.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (b)(10)(A) and (b)(10)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (b)(9). The Department shall approve a single open-channel spillway that is:

A) Of nonerodible construction and designed to carry sustained flows; or

B) Earth or grass-lined and designed to carry short-term,

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infrequent flows at non-erosive velocities where sustained flows are not expected.

c) Temporary impoundments.

1) Temporary impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event or such larger event as may be required by the Department based on factors such as terrain, topography and soil type. Temporary impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

2) In lieu of the combination principal and emergency spillway requirements of Section 1817.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (c)(2)(A) and (c)(2)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (c)(1). The Department shall approve a single open-channel spillway that is:

A) Of nonerodible construction and designed to carry sustained flows; or

B) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(Source: Amended _____ Ill. Reg. _____, effective _____)

Section 1817.68 Use of Explosives: Records of Blasting Operations

a) A record of each blast, including seismograph reports, shall be retained by the operator for at least three (3) years and shall be available for inspection by the Department and the public on request. The record is to be completed by the end of the work day following the day in which the blast occurred, including the seismograph meter reading, if available, and shall contain the following data:

1) Name of the operator conducting the blast;

2) Location, date, and time of blast;

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3) Name, signature, and certification number of the blaster conducting the blast;

4) The name of the owner or resident of, and the direction and distance, in feet, to the nearest dwelling, school, church, or commercial, or institutional building either:

A) Not located in the permit area; or

B) Not owned by the person who conducts the surface mining activities.

5) Type of material blasted;

6) Number of holes, burden, and spacing;

7) Diameter and depth of holes;

8) Types of explosives used;

9) Total weight of explosives used;

10) Weight of explosives used per hole;

11) Maximum weight of explosives detonated within any eight (8) millisecond period;

12) Maximum number of holes or decks detonated within any eight (8) millisecond period;

13) Initiation system;

14) Type and length of stemming;

15) Type of delay detonator and delay periods used;

16) Sketch of the delay pattern, including decking;

17) Reasons and conditions for each unscheduled blast;

18) Wind velocity and direction; and

19) Weather conditions, including those which may cause possible adverse blasting effects.

b) Air blast and/or ground vibration recordings, or photographic copies thereof, where required, shall be kept at the mine site office for a period of three (3) years following the date of the blast, and shall

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be available for inspection by the Department and the public on request. The recordings shall include the following:

1) Maximum air blast and/or ground vibration levels recorded;

2) The exact location of the monitoring equipment, and its distance from the blast, and the date and time of the recording;

3) Name of the person and firm making the recording;

4) Name of the person and firm analyzing the recording. The recording shall be signed and dated by the person performing the analysis; and

5) The type of instrument, sensitivity, and calibration signal or certification of annual calibration. When the recordings required at Sections 1817.67(c) and 1817.67(g) are produced via digitized systems, the sampling rate of the digitizer, in samples per second, shall be stated.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1817.84 Coal Mine Waste: Impounding Structures

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Section 1817.81.

a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the Department that the stability of such a structure conforms to the requirements of this Part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Department in accordance with 62 Ill. Adm. Code 1780.25.

b)

1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with Section 1817.49(a) and (c). Such structures may not be retained permanently as part of the approved post-mining land use.

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2) ~~If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of 30 CFR 77.216(a), the combination of principal and emergency spillways shall be able to safely pass the one hundred (100) year, six (6) hour design precipitation event.~~ Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event as specified by Department after consideration of factors such as watershed size and characteristics necessary to ensure design in accordance with prudent engineering practices.

c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion in accordance with Section 1817.47. Inlets shall be protected against blockage.

d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that causes instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of Section 1817.43 and designed to safely pass the runoff from a one hundred (100) year, six (6) hour design precipitation event.

e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can be removed within a ten (10) day period.

f) For an impounding structure constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

Section 1817.116 Revegetation: Standards for Success

a)

1) Success of revegetation shall be judged in accordance with Sections 1817.116 and 1817.117.

2)

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A) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with subsection (a)(2)(C).

B) The period of extended responsibility shall continue for a period of not less than five (5) full years. Vegetation parameters identified in subsection (a)(1) shall equal or exceed the approved success standard set forth in subsection (a)(3).

C) The Department shall approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved post-mining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

D) Rill and gully repair on cropland-capable reclaimed land will not be considered augmentation if an operator has an approved erosion control plan in place in the field pursuant to 62 Ill. Adm. Code 1823.14(g) or 1825.14(f), and shortly after the repair, the Department makes the following determinations:

i) the area is a minor erosional feature;

ii) the area is small;

iii) the erosion is not expected to recur; and

iv) the area is stable.

E) Rill and gully repair on noncropland-capable land will not be considered augmentation if, shortly after the first rainfall event after the repair, the Department makes the following determinations:

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i) the area is a minor erosional feature;

ii) the area is small;

iii) the erosion is not expected to recur; and

iv) the area is stable.

~~B~~F)

i) In those cases where a permittee augments any cropland areas in order to achieve the revegetation success standards of subsection (a)(3)(C), the permittee shall apply the same or superior augmentation measures to all other lands reclaimed using the same techniques and the five (5) year period of responsibility shall recommence. The Department shall waive augmentation if the other areas have been previously augmented in a similar or superior manner or have met the revegetation success standards for cropland or the permittee can document a minimum of three (3) years of successful woody species establishment for forest products and wildlife habitat land uses as required by Section 1817.117(a). If the woody species have been planted less than three (3) years prior to the augmentation of the cropland areas, the Department shall grant additional time to evaluate the success of the woody species planting.

ii) The five (5) year period of responsibility shall not recommence on areas where the operator has met the revegetation success standards of subsection (a)(3)(E).

iii) If cropland is augmented the Department shall retain sufficient performance bond at the time of phase II performance bond release to ensure the cost of similarly augmenting all other high capability lands, if required, is covered in the remaining bond amount.

3) Ground cover~~,~~ and production~~,-or-stocking~~ shall be considered equal to the approved success standard when they are not less than ninety (90) percent of the success standard. The sampling techniques for measuring success shall use a ninety (90) percent statistical confidence interval (i.e., one-sided t test

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with a 0.10 alpha error). Vegetative ground cover shall be measured using the technique set forth in 62 Ill. Adm. Code 1817.117(d). Standards for success shall be applied in accordance with the approved post-mining land use and, at a minimum, the following conditions:

A) The vegetative ground cover for areas previously disturbed by mining operations that were not reclaimed to the requirements 62 Ill. Adm. Code 1810 through 1828, and that are remined or otherwise redisturbed by surface coal mining operations, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion;

B) For areas to be developed for industrial, commercial or residential use less than two (2) years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion;

C) For areas designated in the approved reclamation plan as cropland, except those cropland areas subject to 62 Ill. Adm. Code 1823.15, success of revegetation of cropland areas shall be determined in accordance with 62 Ill. Adm. Code 1816.116(a)(4). Crop production shall be considered successful if it is ninety (90) percent of that crop production required in 62 Ill. Adm. Code 1816.116(a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, ~~provided crop years do not occur before the fourth year (inclusive)~~ except the first year of the five (5) year responsibility period. During the extended five (5) year responsiblity period, erosion from cropland must be minimized using equivalent or better management practices than surrounding unmined cropland. The five (5) year responsibility period shall begin after the last year of augmented seeding, fertilizing, or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing or crops grown in rotation. Crop production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading;

D) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of revegetation shall be determined on the basis of tree and shrub stocking populations and

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ground cover. The tree and shrub ~~stocking~~ population and ground cover shall meet the standards described in Section 1817.117; and

E) For areas designated as pasture and/or hayland or grazing land in the approved reclamation plan, except for erosion control devices and other structures (i.e., levees, ditches, waterways, impounding structures, etc.) success of revegetation (tons of grasses and/or legumes per acre) shall be determined in accordance with 62 Ill. Adm. Code 1816.116(a)(4). Productivity shall be considered successful if it is ninety (90) percent of the productivity required in 62 Ill. Adm. Code 1816.116(a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, ~~provided--that-both production--years-do--not--occur-before--the-fourth--year (inclusive)~~ except the first year of the five (5) year extended responsibility period. Revegetation success shall also be determined in accordance with Section 1816.117 (a)(2). Production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading. On cropland-capabable land, the Department shall allow the use of one (1) successful year of corn production as a substitute for one (1) successful year of hay production under this subsection.

4) In order to use the Agricultural Lands Productivity Formula, 62 Ill. Adm. Code 1816.Appendix A, to determine success of revegetation, the requirements of 62 Ill. Adm. Code 1816.116(a)(4) shall apply.

b) The person who conducts underground mining activities shall:

1) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Department, to identify if remedial actions are necessary during the applicable period of liability specified in subsection (a); and

2) Permittees shall submit by ~~January--1~~ February 15 of each year a report of reclamation activities conducted during the previous calendar year using forms provided by the Department. Reclamation activities to be reported include, but are not limited to, crops used in temporary and permanent seedings, grasses and legumes planted, trees and shrubs planted, soil amendments added, and type and location of augmentation

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activities. The forms shall be submitted with a copy of the approved post-mining land use and capability map depicting the location of such activities. The map shall be planned as a continuous map so the reclamation activities conducted each year may be added and indicated on the map by the dates the activities were conducted.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1817.117 Revegetation: Tree and Shrub Vegetation ~~Stocking~~

a) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of vegetation shall be determined on the basis of tree and shrub ~~stocking~~ population and vegetative ground cover. Such parameters are described as follows:

1) Trees and shrubs that will be used in determining the success of ~~stocking~~ vegetation and the adequacy of plant arrangement shall have utility for the approved post-mining land use. Tree and/or shrub ~~stocking~~ population shall be considered successful if it meets ~~is--ninety-(90)-percent-of-the-stocking~~ the population required in subsection (b) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) during the last year of the responsibility period. Trees and shrubs counted in determining such success shall be healthy, e.g. not demonstrating abnormal growth, coloring, leaf drop or disease. At the time of bond release such trees and shrubs shall be alive, and shall have been in place for at least three (3) growing seasons, i.e. three (3) years.

2) Vegetative ground cover shall not be less than required to achieve the approved post-mining land use and shall be adequate to control erosion.

3) ~~Rock-areas,~~ Ppermanent roads ~~and-surface-water-drainage-ways,~~ parking lots and similar impervious structures on the revegetated area shall not require ~~stocking~~ the planting of trees and shrubs or herbaceous ground cover.

4) For purposes of this Section, herbaceous species means grasses, legumes and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aboveground parts of vegetation and the litter that is produced naturally on site.

5) For purposes of this Section, normal husbandry and

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conservation practices shall include pruning, disease, pest, vermin and herbaceous vegetation control including mowing, replanting and rill and gully repairs. The replanting of trees and shrubs in areas described in 62 Ill. Adm. Code 1817.116(a)(2)(C) shall be limited to 20% of the original approved planting rate during the first year of the responsibility period and 10% of the original approved planting rate during the second year of the responsibility period. The repair of rills and gullys shall be limited to those approved as a normal conservation practice under 62 Ill. Adm. Code 1817.116(a)(2)(C).

b) For areas where woody plants are used for fish and wildlife habitat (including shelter belts), or recreation land uses, the area shall have a minimum ~~stocking~~ population of two hundred and fifty (250) trees or shrubs per acre; where woody plants are used for forest products land uses, the area shall have a minimum ~~stocking~~ population of four hundred and fifty (450) trees or shrubs per acre.

c) For areas planted to trees or shrubs including wildlife habitat (including shelter belts), recreation, and forest products land uses, the sampling procedure for measuring ~~success of stocking~~ populations is described as follows:

1) The permittee shall submit a scale drawing or aerial photograph delineating the area(s) to be sampled and the total number of acres in each area. A one (1) inch equals five hundred (500) feet (1:500) or larger scale shall be used.

2) One of the following circular plot sizes shall be selected by the sample enumerator:

Plot Size/Acres	Radius/Feet
1/160	9.31
1/120	10.75
1/100	11.78
1/90	12.41
1/80	13.17
1/70	14.07
1/60	15.20
1/50	16.65
1/40	18.61
1/30	21.50
1/20	26.33
1/10	37.24
1/5	52.66
1/4	58.88

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3) The number of plots needed to sample 2.5 percent of the area will be calculated employing the following formula:

Number of Plots equals 2.5 percent multiplied by Sample Area in acres divided by plot size.

4) Based on the number of plots needed to be sampled and plot size, locate transect lines an equal distance apart throughout the area to be sampled. Position individual plots an equal distance apart along transect lines. Determine the total length of all transect lines combined and then divide by the total number of plots needed to be sampled. When an individual plot is positioned within sixty (60) feet of the boundary of the area to be sampled, the location of the plot shall be moved perpendicular to the transect line until the plot is sixty (60) feet from the boundary of the area to be sampled or the greatest distance possible where sixty (60) feet cannot be achieved.

5) Sample each plot for compliance with subsections (a)(1) and (b) and record live trees and/or shrubs and species.

6) Calculate ~~stocking~~ population levels as follows:

A) Average number of live trees and/or shrubs per plot equals total number of live trees and/or shrubs divided by number of plots; and

B) Number of live trees and/or shrubs per acre equals average number of live trees and/or shrubs per plot multiplied by plot size denominator.

7) Representatives of the Department or the Illinois Department of Conservation shall conduct all sampling.

d) Vegetative ground cover shall be measured by the following technique:

1) Twenty (20) random points shall be identified in the area to be tested.

2) A twenty (20) foot engineer's tape shall be extended directly south of each point. If the tape extends beyond the boundary of the area to be tested or extends into an area where herbaceous ground cover has been controlled with herbicides to minimize competition with woody plants, the tape shall be rotated in ninety (90) degree increments until the entire

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twenty (20) foot length is within the boundary of the area to be tested or area not treated with the herbicide.

3) A measurement shall be taken at each two tenths (.2) increment directly above or below the tape.

4) Ground cover shall be determined to be present if any vegetation identified in Section 1817.117(a)(4) is measured at the increment.

5) A percentage of ground cover shall be established for the area tested by taking the total number of measurements where ground cover was determined to be present.

6) If the vegetative ground cover is adequate to control erosion, i.e. absence of rills and gullys, and sufficient to achieve its approved post-mining land use, the percentage of ground cover determined by this technique shall be deemed successful.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

Section 1817.150 Roads: General

~~Underground-mining-activities--shall-be-conducted-to--insure-the-construction,-maintenance,-and--postmining-conditions-of-roads--into-and-across-the--site-of-operations-will-control-or-prevent--erosion-and-siltation,-pollution-of-water,-damage-to-fish-and-wildlife-or-their-habitat,-or-public-or-private-property.~~

a) Road classification system.

1) Each road, as defined in 62 Ill. Adm. Code 1701.Appendix.A, shall be classified as either a primary road or an ancillary road.

2) A primary road is any road which is:

A) Used for transporting coal or spoil;

B) Frequently used for access or other purposes for a period in excess of six months; or

C) To be retained for an approved post-mining land use.

3) An ancillary road is any road not classified as a primary road.

b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as

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to:

1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

7) Use nonacid- and nontoxic-forming substances in road surfacing.

c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size in accordance with current, prudent engineering practices, and any necessary design criteria established by the Department.

d) Location.

1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Department in accordance with applicable sections of

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62 Ill. Adm. Code 1817.41 through 1817.43 and 1817.57.

2) Roads shall be located to minimize downstream sedimentation and flooding.

e) Maintenance.

1) A road shall be maintained to meet the performance standards of this Section in accordance with prudent engineering and maintenance practices.

2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

f) Reclamation. A road not to be retained under an approved post-mining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

1) Closing the road to traffic;

2) Removing all bridges and culverts unless approved as part of the post-mining land use;

3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the post-mining land use and revegetation requirements;

4) Reshaping cut and fill slopes as necessary to be compatible with the post-mining land use and to complement the natural drainage pattern of the surrounding terrain;

5) Protecting the natural drainage patterns by installing dikes or cross-drains as necessary to control surface runoff and erosion; and

6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 62 Ill. Adm. Code 1817.22 and 1817.111 through 1817.117.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1817.151 Primary roads Primary roads shall meet the requirements of Section 1817.150 and the additional requirements of this Section.

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a) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Department by a qualified registered professional engineer. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the report. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

b) Safety Factor. Each primary road embankment shall have a minimum static factor of 1.3.

c) Location.

1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Department as temporary routes during periods of road construction.

d) Drainage control. In accordance with the approved plan:

1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross-drains and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the Department as necessary to ensure proper drainage control design in accordance with prudent engineering practices.

2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

5) Natural stream channels shall not be altered or relocated without the prior approval of the Department in accordance with applicable sections of 62 Ill. Adm. Code 1817.41 through

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1817.43 and 1817.57; and

6) Except as provided in Section 1817.151(c)(2), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The Department shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to steamflow.

e) Surfacing. Primary roads shall be surfaced with material approved by the Department as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Source: Added at ___ Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Permit Applications--Minimum Requirements for Legal, Financial, Compliance, and Related Information

2) Code Citation: 62 Ill. Adm. Code 1778

3) Section Number: 1778.14 — Proposed Action: Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On November 2, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) Springfield Field Office Director sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations.

The following discussion describes the proposed amendments of Part 1778 in response to OSMRE's directive.

Section 1778.14 sets forth permit application requirements regarding violation information. The first proposed amendment to subsection (c) clarifies that the reference to the Federal Surface Mining Control and Reclamation Act includes all state programs approved thereunder. The second proposed amendment to subsection (c) clarifies that the violation reporting requirements apply only to Federal laws or regulations pertaining to air or water environmental protection, rather than every violation of a Federal law or regulation. The proposed amendments serve to make the rule no less effective than its counterpart federal rule, 30 CFR 778.14.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

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Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

C) Reporting, bookkeeping or other procedures required for compliance: None

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1778
PERMIT APPLICATIONS--MINIMUM REQUIREMENTS
FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Section
1778.4 Responsibility (Repealed)
1778.11 Applicability (Repealed)
1778.13 Identification of Interests
1778.14 Violation Information
1778.15 Right of Entry Information
1778.16 Relationship to Areas Designated Unsuitable for Mining
1778.17 Permit Term
1778.18 Insurance
1778.20 Identification of Location of Public Office for Filing of Application (Repealed)
1778.21 Proof of Publication
1778.22 Facilities or Structures Used in Common

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9348; amended at 11 Ill. Reg. 8368, effective July 1, 1987; amended at 14 Ill. Reg. 11873, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1778.14 Violation Information

An application shall contain the following:

a) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1) Had a Federal or State coal mining permit suspended or revoked in the last five (5) years preceding the date of submission of the application; or

2) Forfeited a performance bond or similar security deposited in lieu of bond.

b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including:

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1) Identification number and date of issuance of the permit and the date and amount of bond or similar security;

2) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

3) The current status of the permit, bond, or similar security involved;

4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5) The current status of these proceedings.

c) For any violation of a provision of the Federal Act (Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.), a provision of a State regulatory program approved pursuant to the Federal Act or of any law, rule or regulation of the United States, or of any State ~~law, rule or regulation~~ pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

2) A brief description of the violation alleged in the notice;

3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (c) to obtain administrative or judicial review of the violations;

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4) The current status of the proceedings and of the violation notice; and

5) The actions, if any, taken by any person identified in subsection (c) to abate the violation.

d) Information about the applicant's present financial condition which would provide assurance to the Department that no further forfeiture would be expected.

e) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this Section. Information submitted as a change shall be evaluated in the same manner as the original application.

Source: Amended at ___ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Requirements for Coal Exploration

2) Code Citation: 62 Ill. Adm. Code 1772

3)

Section Number:	Proposed Action:
1772.11	Amended
1772.14	Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with and no less effective than current Federal regulations, pursuant to 30 CFR 732.17. Section 1772.14 was one of Illinois' regulations identified by OSMRE as being inconsistent with federal requirements. In addition, the Department has identified outdated material in Section 1772.11 which it now proposes to correct.

Part 1772 sets forth requirements for coal exploration. The Department is proposing to amend Section 1772.11 by updating the oil and gas forms which are referenced in subsection (b)(5).

In response to OSMRE's September 20, 1989 directive, the Department proposes to amend Section 1772.14 by expanding its scope to apply to commercial use as well as sale, and by adding application requirements for coal exploration. The proposed amendments serve to make the Department's regulations consistent with federal counterpart regulations at 30 CFR 772.14.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impacts on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this

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proposed rulemaking:
Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have gross annual sales of less than $4 million.

C) Reporting, bookkeeping or other procedures required for compliance: Small businesses intending to use or sell coal extracted under an exploration permit must first obtain a surface coal mining and reclamation operations permit unless the sale or commercial use is for coal testing purposes only.

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1772
REQUIREMENTS FOR COAL EXPLORATION

Section
1772.1 Scope and Purpose
1772.11 Notice Requirements for Exploration Removing 250 Tons of Coal or Less
1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal
1772.13 Coal Exploration Compliance Duties
1772.14 Requirements for Commercial Use or Sale
1772.15 Public Availability of Information

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7905.01, 7905.02, 7905.03 and 7909.01).

SOURCE: Adopted at 11 Ill. Reg. 8385, effective July 1, 1987; amended at 14 Ill. Reg. 11880, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1772.11 Notice Requirements for Exploration Removing 250 Tons of Coal or Less

a) Any person who intends to conduct coal exploration operations outside the permit area during which less than two hundred and fifty (250) tons of coal will be removed shall prior to conducting the exploration, file with the Illinois Department of Mines and Minerals (Department) a written notice of intention to explore.

b) The notice shall include:

1) The name, address, and telephone number of the person seeking to explore;

2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;

3) A statement of the period of intended exploration, and a precise narrative or other specific description of the location of the intended exploration which identifies which Sections will be affected;

4) A description of the method of exploration to be used and the practices that will be followed to protect the environment and

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to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of 62 Ill. Adm. Code 1815;

5) In addition, the notice shall include a copy of a fully executed "~~Notice of Intent and Application for Blanket Authorization to Drill Coal Test Holes~~ Test Hole Permit" (Form ~~G-14-B~~ OG-7) or "~~Notice---of--Intent--and--Application--for Individual-Authorization-to-Drill-a--Coal~~ Test Hole Record and Plugging Affidavit" (Form ~~OG-14-A~~8). Forms are available from the Oil and Gas Division of the Department which will supervise closure in accordance with 62 Ill. Adm. Code 240.

c) A notice of intention to explore is not an application for a permit.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1772.14 Requirements for Commercial Use or Sale

~~Any--person-who--extracts-coal--for--commercial-sale--during-coal--exploration operations--shall-obtain--a--surface-coal--mining--and-reclamation--operations permit-for-those-operations-from-the-Department-under-62-Ill.--Adm.--Code-1773 through-1785.---No-surface--coal-mining-and--reclamation-operations--permit-is required-if-the-Department-makes-prior--determination-that-the-sale-is-to-test for-coal-properties--necessary-for-the-development-of-surface--coal-mining-and reclamation-operations-for-which-a-permit--application-is-to-be-submitted-at-a later-time.~~

(a) Except at provided under 62 Ill. Adm. Code 1772.14(b) and 1700.11(a)(3), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the Department under 62 Ill. Adm. Code 1773 through 1785.

(b) With the prior written approval of the Department, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Department. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing coal. The application shall contain the following:

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(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(A) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(B) the amount of coal necessary for the test and why a lesser amount is not sufficient; and

(C) a description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Requirements for Permits and Permit Processing

2) Code Citation: 62 Ill. Adm. Code 1773

3)

Section Number:	Proposed Action:
1773.5	Amended
1773.11	Amended
1773.15	Amended
1773.17	Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On August 29, 1990, the Federal Office of Surface Mining Reclamation of Enforcement (OSMRE), by final rule, instructed the Illinois Department of Mines and Minerals (Department) to submit a proposed amendment to Section 1773.5 in order to be consistent with the OSMRE counterpart regulation, 30 CFR 773.5. See 55 Fed. Reg. 35301, 35313 (August 29, 1990).

On November 2, 1990 and December 21, 1990, OSMRE's Springfield Field Office Director sent the Department letters identifying changes necessary to make Illinois' regulations consistent with and no less effective than counterpart Federal regulations.

The following discussion describes the proposed amendments of Part 1773 in response to OSMRE's concerns and directives.

The Department proposes to amend Section 1773.5 by replacing the word "or" with the word "and" in order to be consistent with the federal counterpart rule.

The proposed amendment to Section 1773.11(a) corrects a clerical error identified in OSMRE's November 2, 1990 letter to the Department. The amendment to Section 1773.11(b)(1)(C) corrects the date within the statutory citation.

Section 1773.15 sets forth requirements for the Department's review of permit applications. The proposed amendment to subsection (b)(1) clarifies that the provision applies to all unabated enforcement actions and delinquent civil penalties incurred under any State program pursuant to the Federal Surface Mining Control and Reclamation Act, not just those actions and penalties issued by Illinois or OSMRE. The amendment responds to OSMRE's concern raised in its December 21, 1990 letter to the Department. The proposed amendment to subsection (b)(1)(B)

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clarifies that the rule is not limited to administrative and judicial appeal decisions of violations issued by Illinois, but also applies to administrative and judicial appeal decisions concerning violations issued by regulatory authorities other than the Department. The amendment responds to OSMRE's concern raised in its November 21, 1990 letter to the Department.

Section 1773.17 sets forth conditions applicable to permits issued by the Department. The proposed amendment to subsection (h) clarifies that the provision applies whenever a cessation order is issued, regardless of whether it is issued by the Department or by OSMRE. The amendment serves to make the regulation no less effective than OSMRE's counterpart regulation, 30 CFR 773.17(i).

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendment will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on

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Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

C) Reporting, bookkeeping or other procedures required for compliance: None

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1773
REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Section
1773.1 Scope and Purpose
1773.5 Definitions
1773.11 Requirements to Obtain Permits
1773.12 Regulatory Coordination with Requirements under Other Laws
1773.13 Public Participation in Permit Processing
1773.14 Opportunity for Public Hearing
1773.15 Review of Permit Applications
1773.17 Permit Conditions
1773.19 Permit Issuance and Right of Renewal
1773.20 Improvidently Issued Permits: General Procedures
1773.21 Improvidently Issued Permits: Rescission Procedures

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 11 Ill. Reg. 8395, effective July 1, 1987; amended at 14 Ill. Reg. 11886, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1773.5 Definitions

For purposes of this Part, owned or controlled and owns or controls means any one or a combination of the relationships specified in subsections (a) ~~or~~ and (b) below:

a) Ownership or control is evidenced by:

1) Being a permittee of a surface coal mining operation;

2) Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or

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indirectly to determine the manner in which the relevant surface coal mining operation is conducted.

1) Being an officer or director of an entity;

2) Being the operator of a surface coal mining operation;

3) Having the ability to commit the financial or real property assets or working resources of an entity;

4) Being a general partner in a partnership;

5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1773.11 Requirements to Obtain Permits

a) All operations.

On and after February 1, 1983, no person shall engage in or carry out any surface coal mining operations on non-Federal or non-Indian Lands within the State, unless such person has first been issued a permanent regulatory program permit by the Illinois Department of Mines and Minerals (Department), except as provided for in subsection (b). A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

b) Continuation of interim regulatory program operations.

1) A person authorized to conduct surface coal mining and reclamation operations under a permit issued or amended by the Department in accordance with the requirements of the interim regulatory program may conduct such operations beyond February

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1, 1983, if:

A) Not later than August 3, 1982, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after February 1, 1983, in accordance with the provisions of the permanent program;

B) The Department has not yet rendered an initial administrative decision approving or disapproving the permit; and

C) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (Federal Act), the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.) (State Act), 62 Ill. Adm. Code 1800 through 1850 and all terms and conditions of the interim program permit.

2) No new interim program permits shall be issued.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 1773.15 Review of Permit Applications

a) General.

1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, in accordance with Section 1773.19, either granting, requiring modification of, or denying the application. If an informal conference is held under Section 1773.13(c), the decision shall be made within sixty (60) days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3).

2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

b) Review of violations.

1) Based on available information concerning Federal and State

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failure-to-abate cessation orders, as defined in 62 Ill. Adm. Code 1843.11(b) or under the counterpart rule of another State regulatory authority, unabated Federal and State imminent harm cessation orders, as defined in 62 Ill. Adm. Code 1843.11(a) or under the counterpart rule of another State regulatory authority, delinquent civil penalties issued pursuant to Section 8.04 of the State Act and Section 518 of the Federal Act or pursuant to the counterpart provision of another State regulatory program, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the Department shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the State Act, Federal Act or any other law, rule or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the Department may presume that a notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the Department shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

A) Submit to the Department proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

B) Establish for the Department that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the circuit court reviewing the violation, pursuant to 62 Ill. Adm. Code 1775.13 or in accordance with the procedures established by other State regulatory authorities, either denies a stay applied for in the appeal or affirms the violation, then the applicant shall submit the proof required under

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subsection (b)(1)(A) within thirty (30) days of the court's decision.

2) Any permit that is issued on the basis of proof submitted under subsection (b)(1)(A) that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B), shall be conditionally issued.

3) If the Department makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Federal or State Acts of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Federal or State Acts, the application shall be denied. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 62 Ill. Adm. Code 1775.11.

c) Written findings for permit application approval.

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

1) The application is complete and accurate and the applicant has complied with all requirements of the Federal Act, State Act and the regulatory program.

2) The applicant has demonstrated that reclamation as required by the Federal Act, State Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

3) The proposed permit area or the proposed shadow area for a planned subsidence operation is:

A) Not within an area under study or administrative proceedings under a petition, filed pursuant to 62 Ill. Adm. Code 1764, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977,

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he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

B) Not within an area designated as unsuitable for mining pursuant to 62 Ill. Adm. Code 1762 and 1764 or subject to the prohibitions or limitations of 62 Ill. Adm. Code 1761.11 and 1761.12.

4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under 62 Ill. Adm. Code 1778.15(b).

5) The Department has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, in accordance with 62 Ill. Adm. Code 1780 and 1784 and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

6) The applicant has demonstrated that any existing structure will comply with 62 Ill. Adm. Code 1700.11(d).

7) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870.

8) The applicant has satisfied the applicable requirements of 62 Ill. Adm. Code 1785.

9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural post-mining land use, in accordance with the requirements of 62 Ill. Adm. Code 1816.111(d) and 1817.111(d).

10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

11) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.106 or 1817.106, the site of the operation is a previously mined area as defined in 62 Ill. Adm. Code 1701 Appendix A.

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12) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional measures are necessary.

d) Performance bond submittal.

If the Department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 62 Ill. Adm. Code 1800.

e) Final compliance review. After an application is approved, but before the permit is issued, the Department shall reconsider its decision to approve the application, based on the compliance review required by subsection (b)(1), in light of any new information submitted under 62 Ill. Adm. Code 1778.13(i) and 1778.14(e).

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 1773.17 Permit Conditions

Each permit issued by the Department shall be subject to the following conditions:

a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to 62 Ill. Adm. Code 1800.

b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the Department otherwise directs in the permit.

c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Federal and State Acts, and the requirements of the regulatory program.

d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Department and Secretary of the United States Department of the Interior to:

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1) Have the right of entry provided for in 62 Ill. Adm. Code 1840.12; and

2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with 62 Ill. Adm. Code 1840, when the inspection is in response to an alleged violation reported to the Department by the private person.

e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

2) Immediate implementation of measures necessary to comply; and

3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

f) As applicable, the permittee shall comply with 62 Ill. Adm. Code 1700.11(d) for compliance, modification, or abandonment of existing structures.

g) The operator shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer or use.

h) Within thirty (30) days after a cessation order is issued under 62 Ill. Adm. Code ~~Section~~ 1843.11 or 30 CFR 843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the Department the following information, current to the date the cessation order was issued, or notify the Department in writing that there has been no change since the immediately preceding submittal of such information:

1) Any new information needed to correct or update the information previously submitted to the Department by the permittee under 62 Ill. Adm. Code 1778.13(c); or

2) If not previously submitted, the information required from a permit applicant by 62 Ill. Adm. Code 1778.13(c).

(Source: Amended at ___ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

2) Code Citation: 62 Ill. Adm. Code 1774

3) Section Number: 1774.13 — Proposed Action: Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
Section 1774.13 sets forth the Illinois Department of Mines and Minerals' (Department) regulations concerning permit revision reqirements. The proposed amendment to subsection (b)(1), which gives the Department ninety (90) days rather than (30) days to approve or disapprove applications for insignificant permit revisions, is more in keeping with the realities of insignificant permit revision reviews. The proposed ninety (90) day limit remedies the recurring situation where the Department is required to deny an application for insignificant permit revision simply because it needs additional information from the applicant which takes longer than thirty (30) days to provide.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendment will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

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Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

C) Reporting, bookkeeping or other procedures required for compliance:
None

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1774
REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Section
1774.1 Scope and Purpose
1774.11 Department Review of Permits
1774.13 Permit Revisions
1774.15 Permit Renewals
1774.17 Transfer, Assignment, or Sale of Permit Rights

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 11 Ill. Reg. 8469, effective July 1, 1987; amended at 14 Ill. Reg. 11900, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1774.13 Permit Revisions

a) During the term of a permit, the permittee may submit an application to the Department for a revision of the permit. Such application may be made on the standard Department permit form; however, only those sections of the form which pertain to the revision in question must be completed.

b) Application Requirements and Procedures.

1) The Department will approve or disapprove applications for insignificant revisions within ~~thirty (30)~~ ninety (90) days after receipt of the application; applications for significant revision will be acted upon in accordance with 62 Ill. Adm. Code 1773.13 and 1773.15.

2) A significant revision to a permit shall be obtained for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. For purpose of these requirements, significant departures from the methods or conduct of mining or reclamation operations include any change in such mining or reclamation operations, except the following, if not contemplated or provided for in the original permit:

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A) For surface mines, changes of direction of mining or location of mining equipment within the permit area;

B) Substitution of mining equipment designed for the same purpose, the use of which is not detrimental to achievement of final reclamation or subsidence control;

C) For underground mines, any change in direction or location of mining within the permit area or shadow area, in response to unanticipated events;

D) Any other change in operations, methods, or conduct of mining described in writing to the Department which the Department excuses in writing from requirement of revision on a case-by-case basis after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or subsidence control plans or upon the surrounding area;

E) Any alteration in the reclamation plan or reclamation operations which does not involve significant delay or any change in land use described in writing to the Department and excused from this requirement of revision on a case-by-case basis; or

F) Any temporary change in operations, subsidence control or reclamation plans necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee, after review and approval by the Department in writing, provided that all steps specified by the Department to maximize environmental protection are taken.

3) All significant permit revision applications shall meet the requirements of 62 Ill. Adm. Code 1773.13, 1773.19(b)(1) and (3) and 1778.21.

c) No application for a permit revision shall be approved unless the application demonstrates and the Department finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 62 Ill. Adm. Code 1773.15(c) which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

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d) Extensions of the permit area, except for incidental boundary revisions, shall be made by application for a new permit, and shall not be approved under this Part. Extensions of the shadow area, except for incidental boundary revisions, shall be made and approved pursuant to the requirements of this Part. Application for incidental boundary revisions shall be made pursuant to subsection 1774.13(a). Incidental boundary revisions are those which:

1) Constitute a relatively small percentage of the initial permit acreage;

2) Are contiguous with the permit acreage;

3) Are required for the orderly and continuous mining operation;

4) Would be reclaimed in conformity with the initial plan;

5) For the purpose of this section, incidental boundary changes are described as follows:

Original Permit Acres	Maximimum Size of Boundary Changes-Acres
Up to 10	1
Up to 25	2.5
Up to 50	5
Up to 75	7.5
Up to 100	10
Over 100	20

6) A determination as to what constitutes a significant departure shall be made by the Department in consultation with the permittee. Changes which do not alter the final reclamation or mining plan are considered minor and do not require permit revision. However, any request for such changes shall be included in a written request to the Department.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Special Program Performance Standards on Prime Farmland

2) Code Citation: 62 Ill. Adm. Code 1823

3)

Section Number:	Proposed Action:
1823.14	Amended
1823.15	Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

The following discussion describes the proposed amendments of Part 1823 in response to OSMRE's directive.

Section 1823.14 sets forth the Department's soil replacement requirements on prime farmland. Proposed new subsection (g) requires that prime farmland have a planned erosion control system in certain specified instances. The proposed amendment is in response to OSMRE's September 20, 1989 directive regarding the repair of rills and gullys and is referenced in 62 Ill. Adm. Code 1816.116.

Section 1823.15 sets forth the Department's requirements for revegetation requirements on prime farmland. The proposed amendment to subsection (b)(3) is in response to OSMRE's September 20, 1989 directive. Additionally, a clerical error was corrected in subsection (b)(3).

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? Yes

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will

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have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

C) Reporting, bookkeeping or other procedures required for compliance: None

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1823
SPECIAL PROGRAM PERFORMANCE STANDARDS--
OPERATIONS ON PRIME FARMLAND

Section
1823.1 Scope
1823.2 Objective
1823.11 Prime Farmland: Special Requirements
1823.12 Prime Farmland: Soil Removal
1823.13 Prime Farmland: Soil Stockpiling
1823.14 Prime Farmland: Soil Replacement
1823.15 Prime Farmland: Revegetation

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; emergency amendment at 6 Ill. Reg. 8502, effective July 1, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 9987, effective September 3, 1982; codified at 8 Ill. Reg. 9361; amended at 10 Ill. Reg. 9631, effective July 1, 1986; amended at ____ Ill. Reg. _____, effective _____.

Section 1823.14 Prime Farmland: Soil Replacement

Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

a)

1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches except where a natural rock formation occurs at shallower depths. The Department shall specify a depth greater than forty-eight (48) inches wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths; and

2) Section 1823.14(a)(1) and (d) shall not apply to prime farmland and gragipan soils. Prime farmland fragipan soil shall be reconstructed in accordance with 62 Ill. Adm. Code 1825.14(a)(1), (a)(2), (a)(3), and (a)(5). For the purposes of this provision, prime farmland fragipan soils are specific soils classified as prime farmland that are underlain with a diagnostic subsurface horizon designated as a fragipan by the Soil Conservation Service of the U.S. Department of

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Agriculture according to the criteria set in Soil Taxonomy, U.S.D.A. Handbook AH 436, including the following soils found in Illinois: Ava, Grantsburg, and Hosmer series as defined by the Soil Interpretation Sheets of the Soil Conservation Service.

b) Replace soil material only on land which has been first returned to final grade and scarified according to 62 Ill. Adm. Code 1816.101 through 1816.105 or 62 Ill. Adm. Code 1817.101 through 1817.105, unless site-specific evidence is provided and approved by the Department showing that scarification will not enhance the capability of the recommended soil to achieve equivalent or higher levels of yield;

c) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction;

d) Replace the B horizon or other suitable material specified in Section 1823.12(a)(2) and (a)(3) to the thickness needed to meet the requirements of paragraph (a) of this Section;

e) Replace the A horizon or other suitable soil materials specified in Section 1823.12(a)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in 62 Ill. Adm. Code 1785.17(b)(1)(B) and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted; and

f) Apply nutrients and soil amendments as needed to quickly establish vegetative growth.

g) Prime farmland shall have a planned erosion control system if expected soil loss from row crop production will exceed the tolerable soil loss limits as defined by "Resource Conservation Planning Technical Material-IL-4" (May 12, 1977). "Resource Conservation Planning Technical Material-IL-4", issued by the U.S. Department of Agriculture, Soil Conservation Service, located at 1902 Fox Drive, Champaign, Illinois 61820, is hereby incorporated by reference and does not include later editions or amendments. Terrace systems, when utilized as part of a planned erosion control system, shall be constructed according to U.S. Department of Agriculture, Soil Conservation Service specifications. Erosion control plans in compliance with this subsection shall be submitted to and approved by the Department after final grading based on seasonal factors, the extent of the area, and the sophistication of the erosion control plan.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

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Section 1823.15 Prime Farmland: Revegetation

Each person who conducts surface coal mining and reclamation operations on prime farmland regardless of whether such land has been drilled, blasted, or mined, shall meet the following revegetation requirements during reclamation:

a) Following soil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the Department under 62 Ill. Adm. Code 1785.17 and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 62 Ill. Adm. Code 1816.113 and 1816.114 or 62 Ill. Adm. Code 1817.113 and 1817.114 shall be met.

b) Measurement of success of prime farmland revegetation shall be conducted in accordance with the following provisions:

1) Measurement of success of revegetation shall be initiated within ten (10) years after completion of backfilling and final grading of areas of prime farmland in accordance with the approved reclamation plan.

2) Success of revegetation shall be measured in accordance with 62 Ill. Adm. Code 1816.116(a)(4).

3) Revegetation shall be considered a success when crop production is equivalent to or exceeds the production required in 62 Ill. Adm. Code 1816.116(a)(4), with ninety (90) percent statistical confidence (i.e., one-sided t test with 0.10 alpha error) for a minimum of three (3) crop years of a ten (10) year period, ~~provided that all three (3) crop years do not occur before the fourth year (inclusive)~~ except the first year after augmented seeding, fertilizing, or other management practices, prior to release of the operator's performance bond. The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area. The five (5) year period of extended responsibility shall begin after the last year of augmented seeding, fertilizing or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing.

4) Compliance with this subsection shall not preclude a permittee from demonstrating the required soil productivity under the law by use of soil surveys or other techniques approved consistent with future regulations.

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(Source: Amended at ____ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Surface Mining Permit Application--Minimum Requirements for Reclamation and Operation Plan

2) Code Citation: 62 Ill. Adm. Code 1780

3)

Section Number:	Proposed Action
1780.16	Amended
1780.37	Amended
1780.39	New Section

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On November 2, 1990, OSMRE sent the Department a letter identifying certain typographical errors in the Department's rules which must be amended.

The following discussion describes the proposed amendments of Part 1780 in response to OSMRE's directives.

A typographical error was corrected in Section 1780.16(b)(3)(B).

Section 1780.37 sets forth the Department's requirements regarding transportation facilities which must be included in an application for a surface mining permit. Proposed new subsection (a)(5) adds drawings and specifications for proposed stream fords to be used as temporary routes to the permit application requirements. Proposed new subsection (a)(7) adds removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use to the permit application requirements. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

Proposed new Section 1780.39 requires each applicant for a surface coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

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The proposed amendments to Part 1780 serve to make the Department's permit application requirements consistent with and no less effective than OSMRE's counterpart regulations at 30 CRF 780.37 and 780.38.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. All comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect

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independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have annual sales of less than $4 million.

C) Reporting, bookkeeping or other procedures required for compliance: All applications for a surface coal mining and reclamation operations permit must contain drawings and specifications for each proposed stream ford used as a temporary route and must describe the applicant's plans for removal and reclamation of temporary roads. Applications must also include plans and drawings for each support facility within the proposed permit area. Primary road plans and drawings must be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

D) Types of professional skills necessary for compliance: Professional engineer.

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1780
SURFACE MINING PERMIT APPLICATION--MINIMUM
REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section
1780.4 Responsibilities
1780.5 Use of Existing Data
1780.6 Use of Expert Opinion
1780.11 Operation Plan: General Requirements
1780.12 Operation Plan: Existing Structures
1780.13 Operation Plan: Blasting
1780.14 Operation Plan: Maps and Plans
1780.15 Air Pollution Control Plan
1780.16 Fish and Wildlife Plan
1780.18 Reclamation Plan: General Requirements
1780.21 Hydrologic Information
1780.22 Geologic Information
1780.23 Reclamation Plan: Post-mining Land Uses
1780.25 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
1780.27 Reclamation Plan: Surface Mining Near Underground Mining
1780.29 Diversions
1780.31 Protection of Public Parks and Historic Places
1780.33 Relocation or Use of Public Roads
1780.35 Disposal of Excess Spoil
1780.37 Transportation Facilities
1780.38 Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities
1780.39 Support Facilities

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 8511; amended at 11 Ill. Reg. 8602, effective July 1, 1987; amended at 14 Ill. Reg. 11911, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1780.16 Fish and Wildlife Plan

a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

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1) The scope and level of detail for such information shall be determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under subsection (b).

A) Prior to initiating such studies, the applicant shall contact the Department to determine, in accordance with subsection (a)(1)(B), what fish and wildlife resources information will be required.

B) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:

i) Published data and other pertinent unpublished information;

ii) Site-specific information obtained by the applicant; and

iii) Written guidance obtained from agencies consulted.

2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or those species or habitats protected by the Illinois Endangered Species Protection Act, Ill. Rev. Stat. 1987, ch. 8, par. 331 et seq.;

B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

C) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

b) Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and

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adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall--

1) Be consistent with the requirements of 62 Ill. Adm. Code 1816.97;

2) Apply, at a minimum, to species and habitats identified under subsection (a);and

3) Include--

A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation ~~of~~ for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

c) Fish and Wildlife Service review. Upon request, the Department shall provide the resource information required under subsection (a) and the protection and enhancement plan required under subsection (b) to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 1780.37 Transportation Facilities

a) Each application shall contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

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a1) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

b2) A report of appropriate geotechnical analysis, where approval of the Department is required for alternative specifications, or for steep cut slopes under 62 Ill. Adm. Code 1816.150;

e3) A description of measures to be taken to obtain approval of the Department for alteration or relocation of a natural drainageway under 62 Ill. Adm. Code 1816.150;

d4) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Department under 62 Ill. Adm. Code 1816.150;

5) The drawings and specifications for each proposed ford of a perennial or intermittent stream that is used as a temporary route, as necessary for approval of the ford by the Department in accordance with 62 Ill. Adm. Code 1816.151(c)(2);

e6) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area;

7) A description of the plans to remove and reclaim each road that would not be retained under an approved post-mining land use, and the schedule for this removal and reclamation.

b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of 62 Ill. Adm. Code 1816.150 and 1816.151 in accordance with prudent engineering practices. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the certification.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1780.39 Support Facilities

Each applicant for a surface coal mining and reclamation operations permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with 62

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Ill. Adm. Code 1816.181 for each facility.

(Source: Added at ____ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Underground Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan

2) Code Citation: 62 Ill. Adm. Code 1784

3)

Section Number:	Proposed Action
1784.21	Amended
1784.24	Amended
1784.30	New Section

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:
On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On December 21, 1990, OSMRE sent the Department another letter identifying a series of Illinois regulations that must be amended in order to be as effective as the corresponding federal rules.

The following discussion describes the proposed amendments of Part 1784 in response to OSMRE's directive.

Section 1784.21 sets forth the Department's requirements regarding fish and wildlife plans which must be included in an application for an underground mining permit. The proposed amendment to subsection (a)(2)(C) serves to make Illinois' requirements consistent with OSMRE's counterpart regulation, 30 CFR 784.21, which does not restrict the special protection to just the Endangered Species Act of 1973 or the Illinois Endangered Species Protection Act.

Section 1784.24 sets forth the Department's requirements regarding transportation facilities which must be included in an application for an underground mining permit. Proposed new subsection (a)(5) adds drawings and specifications for proposed stream fords to be used as temporary routes to the permit application requirements. Proposed new subsection (a)(7) adds removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use to the permit application requirements. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

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Proposed new Section 1784.30 requires each applicant for an underground coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

The proposed amendments to Part 1784 serve to make the Department's permit application requirements consistent with and no less effective than OSMRE's counterpart regulations at 30 CRF 784.21, 784.24 and 784.30.

Will this proposed rule replace an emergency rule currently in effect? No

Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. All comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 pm. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991 at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

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A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have annual sales of less than $4 million.

C) Reporting, bookkeeping or other procedures required for compliance: All applications for an underground coal mining and reclamation operations permit must contain drawings and specifications for each proposed stream ford used as a temporary route and must describe the applicant's plans for removal and reclamation of temporary roads. Applications must also include plans and drawings for each support facility within the proposed permit area. Primary road plans and drawings must by prepared by, or under the direction of, and certified by a qualified registered professional engineer.

D) Types of professional skills necessary for compliance: Professional Engineer.

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1784
UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section
1784.4 Responsibilities
1784.5 Use of Existing Data
1784.6 Use of Expert Opinion
1784.11 Operation Plan: General Requirements
1784.12 Operation Plan: Existing Structures
1784.13 Reclamation Plan: General Requirements
1784.14 Hydrologic Information
1784.15 Reclamation Plan: Post-mining Land Uses
1784.16 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
1784.17 Protection of Public Parks and Historic Places
1784.18 Relocation or Use of Public Roads
1784.19 Underground Development Waste
1784.20 Subsidence Control Plan
1784.21 Fish and Wildlife Plan
1784.22 Geologic Information
1784.23 Operation Plan: Maps and Plans
1784.24 Transportation Facilities
1784.25 Return of Coal Processing Waste to Abandoned Underground Workings
1784.26 Air Pollution Control Plan
1784.27 Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities
1784.29 Diversion
1784.30 Support Facilities

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9350; amended at 11 Ill. Reg. 8652, effective July 1, 1987; amended at 14 Ill. Reg. 11935, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1784.21 Fish and Wildlife Plan

a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

1) The scope and level of detail for such information shall be

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determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under subsection (b).

A) Prior to intiating such studies, the applicant shall contact the Department to determine, in accordance with subsection (B), what fish and wildlife resources information will be required.

B) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:

i) Published data and other pertinent unpublished information;

ii) Site-specific information obtained by the applicant; and

iii) Written guidance obtained from agencies consulted.

2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or those species or habitats protected by the Illinois Endangered Species Protection Act, Ill. Rev. Stat. 1987~~9~~, ch. 8, par. 331 et seq.;

B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

C) Other species or habitats identified through agency consultation as requiring special protection under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1987~~9~~, ch. 8, par. 331 et seq.), or other applicable State or Federal law.

b) Protection and enhancement plan. Each application shall include a

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description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall --

1) Be consistent with the requirements of 62 Ill. Adm. Code 1817.97;

2) Apply, at a minimum, to species and habitats identified under subsection (a); and

3) Include--

A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

c) Fish and Wildlife Service review. Upon request, the Department shall provide the resource information required under subsection (a) and the protection and enhancement plan required under subsection (b) to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(Source: Amended _____ Ill. Reg. _____, effective _____)

Section 1784.24 Transportation Facilities

a) Each application shall contain a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a

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map, appropriate cross-sections, and the following:

a1) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

b2) A report of appropriate geotechnical analysis, where approval of the Department is required for alternative specifications or for steep cut slopes under 62 Ill. Adm. Code 1817.150;

c3) A description of each measure to be taken to obtain approval of the Department for alteration or relocation of a natural drainageway under 62 Ill. Adm. Code 1817.150;

d4) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Department under 62 Ill. Adm. Code 1817.150;

5) The drawings and specifications for each proposed ford of a perennial or intermittent stream that is used as a temporary route, as necessary for approval of the ford by the Department in accordance with 62 Ill. Adm. Code 1817.151(c)(2);

e6) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area;

7) A description of the plans to remove and reclaim each road that would not be retained under an approved post-mining land use, and the schedule for this removal and reclamation.

b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of 62 Ill. Adm. Code 1817.150 and 1817.151 in accordance with prudent engineering practices. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the certification.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1784.30 Support Facilities

Each applicant for an underground coal mining and reclamation operations permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit

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area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 62 Ill. Adm. Code 1817.181 for each facility.

(Source: Added at ____ Ill. Reg. _____, effective _____)

DEPARTMENT OF NUCLEAR SAFETY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: ACCREDITING PERSONS IN THE PRACTICE OF MEDICAL RADIATION TECHNOLOGY

2) Code Citation: 32 Ill. Adm. Code 401

3)

Section Number:	Proposed Action:
401.20	Amendment
401.30	Amendment
401.40	Amendment
401.50	Amendment
401.60	Amendment
401.70	Amendment
401.80	Amendment
401.100	Amendment
401.110	Amendment
401.130	Amendment
401.140	Amendment
401.APPENDIX A	New Section
401.APPENDIX B	New Section

4) Statutory Authority: Implementing and authorized by Sections 5, 6, 7 and 36 of the Radiation Protection Act of 1990 (P. A. 86-1341, effective September 7, 1990).

5) A Complete Description of the Subjects and Issues Involved: The Department is proposing these amendments to implement the provisions of the Radiation Protection Act of 1990 (the Act) pertaining to accreditation of persons to perform a limited scope of diagnostic radiography procedures of the chest, the extremities, the skull and sinuses, or the spine. Section 6(c) of the Act directs the Department to promulgate rules establishing standards and procedures for accrediting such persons. As specified in Section 6(c) of the Act, the Department's proposed amendments would require any individual seeking limited scope accreditation to register with the Department as a "student-in-training", and would allow such individual to perform diagnostic radiography procedures while under the supervision of a person licensed under the Medical Practice Act of 1987. The proposed amendments also specify the tests that will be administered to persons seeking accreditation to perform a limited scope of diagnostic radiography procedures and require applicants for such accreditation to take the examination within eight months of registering with the Department. The proposed amendments provide standards for disqualifying any trainer whose effectiveness, as demonstrated by the examination pass rates of the individuals the trainer has been responsible for training, is unacceptable. The proposed amendments establshes an examination fee for the limited accreditation as well as a fee for accreditation to perform a limited scope of diagnostic radiography procedures.