



**4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 913**

**[SATS No. IL-109-FOR; Docket ID: OSM-2019-0003  
S1D1S SS08011000 SX064A000 201S180110;  
S2D2S SS08011000 SX064A000 20XS501520]**

**Illinois Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposes revisions to its statute and regulations, including allowing the extraction of coal as an incidental part of a government-financed construction project, revising its Ownership and Control rules, and clarifying land use changes requiring a

significant permit revision. Illinois intends to revise its program to be as effective as the Federal regulations.

**DATES:** Effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** William L. Joseph, Director, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002. Telephone: (618) 463-6460. Email:

*[bjoseph@osmre.gov](mailto:bjoseph@osmre.gov)*

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Illinois Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decisions
- VI. Statutory and Executive Order Reviews

**I. Background on the Illinois Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of

surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program effective June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Illinois program in the June 1, 1982, **Federal Register** (47 FR 23858). In the September 6, 1989, **Federal Register**, (54 FR 36963), the Secretary of the Interior announced that the Illinois program was fully approved effective on that date. You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, and 913.17.

## **II. Submission of the Amendment**

By letter dated December 5, 2018 (Administrative Record No. IL-5100), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. By email dated December 11, 2018, Illinois requested that OSMRE's review be put on hold until it could resubmit the proposed amendment due to editorial changes requested by the Illinois Joint Committee on Administrative Rules. Illinois resubmitted the proposed amendment to OSMRE on February 20, 2019 (Administrative Record No. IL-5112). We used the amendment submitted on February 20, 2019, for our review.

We announced the receipt of the proposed amendment in the May 1, 2019,

**Federal Register** (84 FR 18428). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period ended on May 31, 2019. At the request of three Illinois citizens' organizations, we reopened the public comment period in the June 10, 2019, **Federal Register** (84 FR 26802) and provided another opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period ended on June 24, 2019. We did not hold a public hearing or meeting because one was not requested. We received three public comments that are addressed in the Public Comments section of part IV, Summary and Disposition of Comments, below.

### **III. OSMRE's Findings**

We are approving the amendment as described below. The following are findings we made concerning Illinois' amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at [www.regulations.gov](http://www.regulations.gov).

#### *A. Illinois Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720)—Section 1.06. Scope of the Act.*

Illinois proposes to revise the Illinois Surface Coal Mining Land Conservation and Reclamation Act (ISCMLCRA) (225 ILCS 720), section 1.06, "Scope of the Act," by adding language allowing coal extraction as an incidental part of a government-financed

project. The language added is nearly identical to that found in section 528 of SMCRA (30 U.S.C. 1278).

Illinois' proposed amendment to the Illinois Compiled Statutes Annotated is no less stringent than section 528 of SMCRA (30 U.S.C. 1278). Therefore, we are approving Illinois' revision of the scope of the ISCMLCRA.

Illinois also proposes to revise several Parts of Title 62 of the Illinois Administrative Code, discussed below.

*B. Section 1701, APPENDIX A. Definitions.*

In addition to minor, non-substantive grammatical and punctuation changes, Illinois proposes to revise its regulation at section 1701, Appendix A, by amending or adding definitions, including, "control," "extraction," "government financing agency," "government-financed construction," "knowing," "own, owner or ownership," "violation," "violation notice" and "willful or willfully. These definitions substantively mirror the Federal definitions at 30 CFR 701.5 and 707.5.

Illinois also proposes to revise the definition of "permit area." Illinois' proposed definition is substantively the same as the Federal definition found at 30 CFR 701.5, with one exception. Specifically, Illinois proposes to include the statement that, "the permit area excludes the area defined in this Part as the shadow area." The Illinois program defines "shadow area" as, "any area beyond the limits of the permit area in which underground 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.” Shadow area relates to underground mine workings. Section 516 of SMCRA specifically requires the Secretary “to accommodate the distinct difference between surface and underground mining.” 30 U.S.C. 1266. While there is no statutory or regulatory Federal counterpart definition of “shadow area,” OSMRE finds that Illinois’ distinction between the two terms is consistent with SMCRA. Moreover, we have previously approved Illinois’ treatment of shadow area as distinct from the permit area and approved the definition of shadow area within the Illinois program. For example, in the October 25, 1988, **Federal Register** (53 FR 43112), in response to commenters, we stated, “OSMRE has previously determined that the definition of permit area does not include surface areas above underground workings, which in Illinois is defined as the shadow area.” Based on our comparison to the Illinois program and the Federal regulations we find that the definition of “permit area” including the additional sentence unique to the Illinois program is no less effective than the Federal definition at 30 CFR 701.5. Therefore, we are also approving Illinois’ proposed amendment to the definition of “permit area.”

*C. Part 1703 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*

Illinois proposes adding a new section 1703 to allow the extraction of coal as an incidental part of a government-financed construction project, which incorporates language identical to the Federal regulations at 30 CFR part 707.

We find that Illinois’ proposed amendment does not make its statute or

regulations neither less stringent than nor less effective than the Federal regulations found at 30 CFR part 707. Therefore, we are approving Illinois' revision.

*D. Part 1773 Requirements for Permits and Permit Processing*

Illinois proposes to amend section 1773.15, "Review of Permit Applications" to comport with changes made to the Federal regulations at 30 CFR 773.12 as a result of a Federal rulemaking related to ownership and control. 72 FR 68000 (Dec. 3, 2007). Within the 2007 rulemaking, among other changes, OSMRE removed reference to "control" within the definition of own, owner, or ownership and with respect to ownership; limited the ability of regulatory authorities to look one level down from the applicant when making a permit eligibility determination; and confirmed that each State, "when it processes a permit application, must apply its own ownership and control rules to determine whether the applicant owns or controls any surface coal mining operations with violations." 72 FR 68012. Illinois proposes to prevent the Illinois Department of Natural Resources (DNR) from considering violations upstream of the permit applicant by removing "person who owns or controls the applicant" from this section. We find this to be consistent with the 2007 Federal rulemaking and *Nat'l Mining Ass'n v. Dep't. of the Interior*, 105 F.3d 691, 694 (D.C. Cir. 1997), holding that we cannot deny permits based on violations at operations owned or controlled by the applicant's owners or controllers.

Illinois also proposes to amend section 1773.25, "Standards for Challenging Ownership or Control Links and the Status Violations," to update a subsection reference.

We find that Illinois' proposed amendments do not make its statutes or

regulations neither less stringent than nor less effective than the Federal regulations found at 30 CFR 773.12. Therefore, we are approving Illinois' revisions.

*E. Section 1774 Permit Revisions*

Illinois proposes to amend section 1774.13, "Permit Revisions," to provide further clarification as to which reclamation plan land use changes require a significant revision for a permit application. Illinois proposes to remove the requirement for a significant revision for land use changes involving greater than five percent of the total permit acreage after finding the five percent limitation to be unduly restrictive and burdensome. Instead, DNR will consider changes in the reclamation plan for postmining land use in determining whether a significant revision to the permit must be obtained. Therefore, should a proposed change to the reclamation plan include a land use change from cropland, pastureland, grazing land, forestry, or fish and wildlife habitat to residential, industrial/commercial, recreation, or developed water resources that meet the size criteria of 30 CFR 77.216(a), then a significant revision of the permit must be obtained. Illinois proposes to deem such land use changes as significant permit revisions to ensure protections for conversion from the most common land uses to uses that would have minimal vegetation or pose potential safety concerns receive additional agency approvals. Illinois is establishing these guidelines to ensure the requirements of 30 CFR 774.13(b)(2) are satisfied. Section 511(a)(2) of SMCRA (30 U.S.C. 1261(a)(2)) and the Federal regulations at 30 CFR 774.13(b) require the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application

requirements will apply. OSMRE determined in the September 28, 1983, **Federal Register** (48 FR 44344) that this requirement provided flexibility to the regulatory authority to establish guidelines suitable to the operation of individual State programs. We find that Illinois' proposed amendment to be no less effective than the Federal regulations found at 30 CFR 774.13. Therefore, we are approving Illinois' proposed amendment about certain land use changes qualified as significant revisions.

*F. Section 1778 Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*

Illinois proposes adding a new section 1778.9, "Certifying and Updating Existing Permit Application Information," which incorporates language identical to the Federal regulations at 30 CFR 778.9.

Illinois proposes to amend section 1778.13, "Identification of Interests," to ensure all elements of the Federal regulations at 30 CFR 778.11 and 778.12 are incorporated into the Illinois regulations and to be consistent with changes made to the Federal regulations as a result of the Federal rulemaking published on December 3, 2007. (72 FR 68000).

Illinois proposes to amend section 1778.14, "Violation Information," by adding language to mirror the Federal regulations at 30 CFR 778.14.

Illinois proposes to amend section 1778.15, "Right of Entry Information," to add language found in the Federal regulations at 30 CFR 778.13 related to property interest information to the existing right of entry language in this section, which corresponds to 30 CFR 778.15, so that all property-related rules are located in one section.

We find that Illinois' proposed amendments to the Illinois Code are no less effective than the Federal regulations found at 30 CFR part 1778. Therefore, we are approving Illinois' revisions.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the amendment. As noted in Section II, **Submission of the Amendment**, above, the original comment period ended May 31, 2019. We did not receive comments on the proposed amendment during that period, but we received requests from three Illinois citizens' organizations to reopen the comment period to give the public more time to review the proposed amendment and provide comments. The comment period was reopened June 10, 2019, and ended June 24, 2019. We received three comments during this period from the Illinois Chapter Sierra Club, the Citizens Against Longwall Mining, and Stand Up To Coal.

Two commenters mentioned the "Banner Rules," which refers to the Banner Agreed Order between the Illinois Attorney General and the Illinois Department of Natural Resources that outlines coal mine permitting process reforms stemming from the Banner Mine settlement. We did not take any action based on this comment. Any changes identified within the Banner Rules were not part of this proposed amendment from Illinois and, therefore, are outside the scope of this review. Further, the Banner Agreed Order is a state-mandated order, which both commenters have acknowledged, and as such, we have no jurisdiction to require such changes. When Illinois proposes to make

the changes identified in the Banner Rules, that proposed amendment will be evaluated at that time to determine if the changes would render the Illinois program less effective than the Federal regulations.

Another commenter requested that OSMRE make a renewed effort to require “upstream,” full historic and complete ownership and control information supplied as part of a permit issuance. The commenter contends that this information is essential for citizens in Illinois. We did not take any action based on this comment. In the submitted comment, the commenter acknowledged that there are no major differences in the proposed amendment and the current Federal regulations. In the **Findings** section above, we confirmed that the changes proposed by Illinois conform to the requirements of SMCRA and the Federal regulations, and as such, do not make the Illinois program less effective than the Federal regulations.

Two comments were received regarding the proposed change to section 1774, Permit Revisions, in which Illinois proposes to remove the requirement for a significant revision for land use changes involving greater than five percent of the total permit acreage after finding the five percent limitation to be unduly restrictive and burdensome. The commenters asked that we not approve this change and require Illinois to keep the current five percent standard for a significant revision. We did not concur with this comment as explained in the **Findings** section above.

Finally, one commenter addressed section 1778 of the proposed amendment. The commenter expressed concerns that the many layers to mining corporations present significant challenges for the public to be able to ascertain if a mining permittee has past

mining violations that would affect the issuance of a permit. We did not take any action based on this comment. In the submitted comment, the commenter acknowledged that the Illinois proposed changes are an update to wording to comport with the current Federal regulations. In the **Findings** section above, we confirmed that the changes proposed by Illinois conform to the requirements of SMCRA and the Federal regulations, and as such, do not make the Illinois program less effective than the Federal regulations.

These comments are available in their entirety at [www.regulations.gov](http://www.regulations.gov).

#### *Federal Agency Comments*

On February 21, 2019, pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253(b)), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record No. IL-5113). We did not receive any comments.

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on February 21, 2019, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment

(Administrative Record No. IL-5113). The EPA did not respond to our request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 21, 2019, we requested comments on the amendment (Administrative Record No. IL-5113). We did not receive any comments.

## **V. OSMRE's Decision**

Based on the above finding, we are approving the Illinois amendment that was submitted on February 20, 2019 (Administrative Record No. IL-5112).

To implement this decision, we are amending the Federal regulations at 30 CFR part 913, which codify decisions concerning the Illinois program. In accordance with the Administrative Procedure Act (5 U.S.C. 553), this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253(a)) requires that the State's program must demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

## **VI. Statutory and Executive Order Reviews**

*Executive Order 12630 – Governmental Actions and Interference with Constitutionally*

### *Protected Property Rights*

This rule would not affect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

### *Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

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

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** notification meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected

conduct, rather than a general standard, and promote simplification and burden reduction.

Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** notification and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or to the program amendment that Illinois drafted.

*Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs*

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

*Executive Order 13132 - Federalism*

This rule is not a “[p]olicy that [has] Federalism implications” as defined by section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Illinois program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in sections 2 and 3 of the Executive order and with the principles of cooperative federalism as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of

SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments*

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175, and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal Government and Tribes. Therefore, consultation under the Department’s tribal consultation policy is not required. The basis for this determination is that our decision is on the Illinois program, which does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

*Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of

Energy Effects is not required.

*Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks*

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

*National Environmental Policy Act*

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, Part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A-119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

### *Paperwork Reduction Act*

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

### *Regulatory Flexibility Act*

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 17, 2019.

Alfred L. Clayborne, Regional Director  
DOI Unified Regions 3, 4 and 6

Editorial note: This document was received for publication by the Office of the  
Federal Register on February 20, 2020.

For the reasons set out in the preamble, 30 CFR part 913 is amended as set forth below:

**PART 913 - ILLINOIS**

1. The authority citation for part 913 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended in the table by adding an entry for “225 ILCS 720/1.06(e); 62 IAC 1701.Appendix A; 1703.10; 1773.15, 1773.25; 1774.13; 1778.9, 1778.13, 1778.14, 1778.15” in chronological order by “Date of final publication” to read as follows:

**§ 913.15 Approval of Illinois regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * February 20, 2019	* * <b><u>[Insert date of publication in the Federal Register]</u></b>	* * 225 ILCS 720/1.06(e); 62 IAC 1701.Appendix A; 1703.10; 1773.15, 1773.25; 1774.13; 1778.9, 1778.13, 1778.14, 1778.15.

[FR Doc. 2020-03753 Filed: 3/3/2020 8:45 am; Publication Date: 3/4/2020]