

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is proposed to be amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AEA PA E5 Harrisburg, PA (Revised)**

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 37°43'19" N., long. 76°51'26" W., to lat. 40°07'49" N., long. 77°20'54" W., to lat. 40°16'46" N., long. 77°20'53" W., to lat. 40°42'10" N., long. 76°32'34" W., to lat. 40°13'15" N., long. 76°00'32" W., to lat. 40°00'59" N., long. 76°01'11" W., to the point of beginning, excluding that portion that coincides with the Pottsville, PA, Class E airspace area and the Reading, PA, Class E airspace area.

\* \* \* \* \*

Issued in Jamaica, New York, on January 28, 2005.

**John G. McCartney,**

*Area Staff Manager of Eastern Terminal Operations.*

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**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 913**

[Docket No. IL-104-FOR]

**Illinois Regulatory Program**

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposes revisions to its regulations and statutes to remove provisions relating to the Surface Mining Advisory Council, to update citation references, to correct typographical errors, to update procedures for relocating or closing public roads, and to clarify requirements for subsidence control. Illinois intends to revise its program to

provide additional safeguards and to clarify ambiguities.

This document gives the times and locations that the Illinois program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., e.s.t., March 10, 2005. If requested, we will hold a public hearing on the amendment on March 7, 2005. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on February 23, 2005.

**ADDRESSES:** You may submit comments, identified by Docket No. IL-104-FOR, by any of the following methods:

- *E-mail:* IFOMAIL@osmre.gov.

Include Docket No. IL-104-FOR in the subject line of the message.

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

- *Fax:* (317) 226-6182.

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

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

**Docket:** For access to the docket to review copies of the Illinois program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Area Office.

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

In addition, you may review a copy of the amendment during regular business

hours at the following location: Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, One Natural Resources Way, Springfield, Illinois 62701; Telephone: (217) 782-4970.

**FOR FURTHER INFORMATION CONTACT:**

Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office. Telephone: (317) 226-6700. E-mail: IFOMAIL@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Illinois Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Illinois program in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, 913.16, and 913.17.

**II. Description of the Proposed Amendment**

By letter dated December 10, 2004 (Administrative Record No. IL-5086), the Illinois Department of Natural Resources, Office of Mines and Minerals (Department) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The Department proposed to amend its regulations at 62 Illinois Administrative Code (IAC) Parts 1700, 1761, 1762, 1772, and 1773 and its statutes at 225 Illinois Compiled Statutes (ILCS) 720/1.04. The Department sent the amendment at its own initiative. Below is a summary of the changes proposed by the Department. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

### A. Statute Revision

In 1997, the Illinois General Assembly added Section 1.04 to 225 ILCS 720 of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) to create the Surface Mining Advisory Council to act as an advisory body to the Director of the Illinois Department of Natural Resources and to the Land Reclamation Division of the Office of Mines and Minerals on matters of mining and reclamation. The Illinois General Assembly amended the State Act by repealing 225 ILCS 720/1.04 effective July 10, 2003. Illinois is proposing to amend its program to reflect this repeal.

### B. Regulation Revisions

#### 1. 62 IAC 1700.17 Administration

a. In subsection (a), Illinois proposes to correct its citation reference to the Civil Administrative Code of Illinois from “(Ill. Rev. Stat. 1985, ch. 127, pars. 1 *et seq.*)” to a reference to “[20 ILCS 5/1 *et seq.*]”; to change its reference to SMCRA from “the Surface Mining Control and Reclamation Act of 1977” to a reference to “the Federal Act [30 U.S.C.A. § 1201 *et seq.*]”; and to correct its citation reference to the State Act from “(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909.02)” to a reference to “[225 ILCS 720/9.02]”. Illinois also proposes minor wording changes by changing the language “full authority to administer the State Act” to “full powers and authority to carry out and administer the provisions of this Act”; by changing the language “the Department has the power and the duty to act for the State of Illinois under the Surface Mining Control and Reclamation Act of 1977 (the Federal Act), to submit and implement a State program under the Federal Act, and to apply for, receive, and use for Illinois such moneys and property as are given under the Federal Act” to “the Department has the power and the duty to act as the regulatory authority for the State of Illinois under the Federal Act [30 U.S.C.A. § 1201 *et seq.*], to submit and implement a State program under the Federal Act, and to apply for, receive, receipt for and use for in behalf of the State such moneys and property as are given or granted under the Federal Act”; by changing the phrase “public or private source” to “public and private source”; and by changing the phrase “the State Act” to “this Act.” The revised paragraph reads as follows:

(a) General Duties and Powers. In addition to the duties and powers of the Department prescribed by the Civil Administrative Code of Illinois [20 ILCS 5/1 *et seq.*], the Department shall have full powers and

authority to carry out and administer the provisions of this Act. The Department has the power and the duty to act as the regulatory authority for the State of Illinois under the Federal Act [30 U.S.C.A. § 1201 *et seq.*], to submit and implement a State program under the Federal Act, and to apply for, receive, receipt for and use for in behalf of the State such moneys and property as are given or granted under the Federal Act or any other federal law, or from any other lawful public and private source, for the purposes of this Act. [225 ILCS 720/9.02].

b. At subsection (b), Illinois proposes to correct a citation reference from “(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909.03)” to “[225 ILCS 720/9.03].”

c. At subsection (c), Illinois proposes to correct a citation reference from “(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909.04)” to “[225 ILCS 720/9.04].”

d. At subsection (d), Illinois proposes to correct a citation reference from “(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909.05)” to “[225 ILCS 720/9.05].”

#### 2. 62 IAC 1700.18 Advisory Council on Reclamation

Because the Illinois General Assembly amended the State Act by repealing the statute at 225 ILCS 720/1.04, which created the Surface Mining Advisory Council, Illinois proposes to remove its implementing regulation at 62 IAC 1700.18.

#### 3. 62 IAC 1761.11 Areas Where Mining is Prohibited or Limited

At subsection (e)(1), Illinois proposes to add a citation reference to its regulation at 62 IAC 1761.15 concerning submission and processing of requests for valid existing rights determinations. Revised subsection (e)(1) reads as follows:

(1) The owner thereof has provided a written waiver, pursuant to Section 1761.15, consenting to surface coal mining operations closer than 300 feet; or

#### 4. 62 IAC 1761.14 Procedures for Relocation or Closing of a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road

Illinois proposes to amend its procedures for mining within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road.

a. Illinois is amending subsection (b) by adding new paragraph (1) that requires the applicant to submit a request with an application for a new permit, a significant revision of a permit, an insignificant revision of a permit, or an incidental boundary revision, as applicable, if the applicant does not have valid existing rights and is proposing to conduct mining

operations within 100 feet measured horizontally of the outside right-of-way line of any public road or if the applicant is proposing to relocate or close any public road. Illinois is also proposing to redesignate existing paragraphs (1) through (4) as paragraphs (2) through (5).

b. At newly redesigned subsection (b)(5), Illinois is proposing to remove the requirement that a written finding be made within 30 days after completion of the hearing or after any public comment period ends if no hearing is held based upon information received in writing or at the public hearing for mining within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road. Illinois is also adding the requirement that a road may not be relocated or closed unless the Department determines that the interest of the affected public and landowners will be protected. The revised paragraph reads as follows:

(5) Make a written finding based upon information received at the public hearing, or submitted in writing, as to whether the interests of the affected public and landowners will be protected from the proposed mining operations. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed unless the Department determines that the interests of the affected public and landowners will be protected.

c. At newly redesignated subsection (b)(5), Illinois is also proposing to add provisions at paragraphs (5)(i) and (ii) to provide the time frames for making written findings for requests for mining within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road. The new paragraphs read as follows:

(i) If the proposal to conduct mining operation within 100 feet measured horizontally of the outside right-of-way line of any public road or to relocate or close any public road is contained in an application for a new permit pursuant to Section 1773.13, or a significant revision pursuant to Section 1774.13(b)(3), the written findings shall be issued concurrently with the permit decision pursuant to Section 1773.15(a); or

(ii) If the proposal to conduct mining operation within 100 feet measured horizontally of the outside right-of-way line of any public road or to relocate or close any public road is contained in an application for an insignificant revision pursuant to Section 1774.13(b), or an incidental boundary revision pursuant to Section 1774.13(d), the written findings shall be issued concurrently with the decision to issue or deny the revision.

#### 5. 62 IAC 1761.16 Submission and Processing of Requests for Valid Existing Rights Determinations

Illinois proposes to correct two typographical errors in the second sentence of subsection (b)(3) by changing the reference from “subsection (b)(1)” to a reference to “subsection (b)(2)” and by changing the reference from “subsection (b)(2)” to a reference to “subsection (b)(1).”

#### 6. 62 IAC 1762.15 Exploration on Lands Designated as Unsuitable for Surface Coal Mining Operations

At Section 1762.15, Illinois proposes to change its reference from “this Part” to a reference to “62 Ill. Adm. Code 1761 through 1764” and to change its reference from “this Part, any approved State or Federal program, and other applicable requirements” to a reference to “62 Ill. Adm. Code 1700 through 1850 and other applicable requirements.”

#### 7. 62 IAC 1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal

At subsection (b)(14), Illinois proposes to correct a typographical error by changing its reference from “62 Ill. Adm. Code 176.11” to a reference to “62 Ill. Adm. Code 1761.11.”

#### 8. 62 IAC 1773.15 Review of Permit Applications

At the introductory paragraph of subsection (c)(3), Illinois proposes to remove the language “or the proposed shadow area for a planned subsidence operation” to make it consistent with the counterpart Federal regulation. The revised subsection reads as follows:

(3) The proposed permit area 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, 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 within an area subject to the prohibitions of 62 Ill. Adm. Code 1761.11.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### Written Comments

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

#### Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn: Docket No. IL-104-FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Area Office at (317) 226-6700.

#### Availability of Comments

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

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on February 23, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the

public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based upon the fact that the provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

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

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

#### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the

actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

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

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

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

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1)

considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that a portion of the provisions in 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.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations 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.*). This determination is based upon the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

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

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

effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 13, 2005.

**Charles E. Sandberg,**

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

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