

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

**Small Business Regulatory Enforcement Fairness Act**

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

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

**Unfunded Mandates**

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 904**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 5, 2002.

**Charles E. Sandberg,**

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

For the reasons set out in the preamble, 30 CFR part 904 is amended as set forth below:

**PART 904—ARKANSAS**

1. The authority citation for Part 904 continues to read as follows:

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

2. Section 904.12 is amended by revising the section heading to read as follows:

**§ 904.12 State program provisions and amendments not approved.**

\* \* \* \* \*

3. Section 904.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

**§ 904.15 Approval of Arkansas regulatory program amendments.**

\* \* \* \* \*

Original amendment sub- mission date	Date of final publi- cation	Citation/description
August 13, 2001 .....	May 17, 2002 .....	ASCMRC 845.18(a); Phase II and III Revegetation Success Standards for Grazingland; and Phase III Revegetation Success Standards for Prime Farmland.

4. Section 904.25 is amended in the table by adding a new entry in

chronological order by “Date of final publication” to read as follows:

**§ 904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.**

\* \* \* \* \*

Original amendment sub- mission date	Date of final publi- cation	Citation/description
August 13, 2001 .....	May 17, 2002 .....	ASCMRC 874.12(b)(4); 874.13(d); and 874.14(a)(2).

[FR Doc. 02-12460 Filed 5-16-02; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 913**

**[IL-101-FOR]**

**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 (OSM), 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). The Illinois Department of Natural Resources, Office of Mines and Minerals (Illinois or Department) proposed revisions to its regulations about regulatory coordination with requirements under other laws, permit processing requirements, permit fees, right of entry, performance bonds, revegetation timing,

standards for measuring revegetation success of herbaceous wildlife vegetation, affected acreage, use of explosives, high capability lands, suspension or revocation of permits, and public and administrative hearings. Illinois also proposed to correct or remove outdated references in several regulations. Illinois revised its program to be consistent with the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

**EFFECTIVE DATE:** May 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone:

(317) 226-6700. Internet: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Illinois Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. 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 State program includes, among other things, ". . . a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of 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 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 913.15, 913.16, and 913.17.

**II. Submission of the Amendment**

By letter dated October 15, 2001 (Administrative Record No. IL-5073), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Illinois sent the amendment at its own initiative. Illinois proposed to amend its surface coal mining and reclamation regulations at Title 62 of the Illinois Administrative Code (IAC).

We announced receipt of the amendment in the November 27, 2001, **Federal Register** (66 FR 59201). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 27, 2001. We received comments from one Federal agency.

During our review of the amendment, we identified some editorial problems. We notified Illinois of these concerns by letter dated January 7, 2002 (Administrative Record No. IL-5075).

By letter dated March 6, 2002 (Administrative Record No. IL-5076), Illinois sent us revisions to its proposed

program amendment. Because the revisions merely clarified certain provisions of Illinois' amendment, we did not reopen the public comment period.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

Any revisions that we do not discuss below concern nonsubstantive wording or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Minor Revisions to Illinois' Regulations*

1. Illinois removed its current office address and added a reference to the "Department's Springfield office" at 62 IAC 1700.12(a), Petitions to Initiate Rulemaking; 62 IAC 1780.21(a) and 1784.14(a), Hydrologic Information; 62 IAC 1816.116(a)(2)(C), (5)(A) and 1817.116(a)(2)(C), (5)(A), Standards for Success of Revegetation; and 62 IAC 1846.17(b)(1), Procedure for Assessment of Individual Civil Penalty. Illinois made these changes so the regulations would not have to be corrected because of future address changes.

The proposed changes do not alter the requirements of these previously approved provisions in the Illinois regulations. Therefore, we find that they will not make Illinois' regulations less effective than the corresponding Federal regulations.

2. Illinois made minor wording changes, corrected citation references, and simplified its use of numbers in 62 IAC 1700.11, Applicability; 62 IAC 1700.12, Petitions to Initiate Rulemaking; 62 IAC 1773.12, Regulatory Coordination with Requirements under Other Laws; 62 IAC 1773.13, Public Participation in Permit Processing; 62 IAC 1777.17, Permit Fees; 62 IAC 1780.21, Hydrologic Information; 62 IAC 1785.23, Minor Underground Mine Facilities; 62 IAC 1800.11, Requirement to File a Bond; 62 IAC 1816.41, Hydrologic Balance Protection; 62 IAC 1816.113, Revegetation Timing; 62 IAC 1816.116, Revegetation Standards for Success; 62 IAC 1816.117, Revegetation—Tree, Shrub, and Herbaceous Wildlife Vegetation; 62 IAC 1817.66, Use of Explosives—Blasting Signs, Warnings, and Access Control; 62 IAC 1817.116, Revegetation Standards for Success; 62 IAC 1817.117, Revegetation—Tree, Shrub, and Herbaceous Vegetation; 62 IAC 1825.14,

Soil Replacement on High Capability Lands; 62 IAC 1843.13, Suspension or Revocation of Permits; 62 IAC 1846.17, Procedure for Assessment of Individual Civil Penalty; 62 IAC 1847.3, Permit and Related Administrative Hearings; and 62 IAC 1847.9, Bond Release Public Hearings.

Because these revisions do not change the meaning of Illinois' previously approved regulations, we find that they will not make Illinois' regulations less effective than the corresponding Federal regulations.

*B. Illinois Interagency Committee on Surface Mining Control and Reclamation (Interagency Committee)*

1. Illinois removed the language from 62 IAC 1773.12 that required the Interagency Committee to review permit applications and provide the Department with comments and recommendations for coordination with requirements under other specified laws and regulations. Illinois added language that requires the Department to provide for the coordination of review and issuance of permits with requirements under other specified laws and regulations. Illinois made these revisions because Illinois Public Act 90-0490 abolished the Interagency Committee through an amendment to 225 Illinois Compiled Statutes (ILCS) 720/1.05 in 1997. The amendment to 225 ILCS 720/1.05 also delegated all programmatic functions formerly performed by the Interagency Committee to the Department. The Interagency Committee was originally created to review permit applications and provide comments to the Department on protection of the hydrologic system, water pollution control, the reclamation plan, soil handling techniques, dams and impoundments, and postmining land use.

On November 21, 2001, we approved the amendment to 225 ILCS 720/1.05 because the Department had increased its technical expertise in all areas needed to perform the programmatic functions formerly performed by the Interagency Committee (66 FR 58371). Also, the Department has the authority under 225 ILCS 720/9.04 to delegate responsibilities, other than final action on permits, to other State agencies with the authority and technical expertise to carry out such responsibilities. For the same reasons, we find that Illinois' revised regulation at 62 IAC 1773.12 meets the requirements of and is no less effective than the counterpart Federal regulation at 30 CFR 773.5.

2. Illinois also deleted references to the "Interagency Committee" from 62

IAC 1700.11(b), Applicability; 62 IAC 1780.21(f)(3)(D)(v), Hydrologic Information (Surface Mining Operations); and 1784.14(e)(3)(C)(v), Hydrologic Information (Underground Mining Operations). These regulations required the Department to send copies of permit applications and exemption requests to the Interagency Committee for review and comment. Illinois removed the references because Illinois Public Act 90-0490 abolished the Interagency Committee in the amendment to 225 ILCS 720/1.05. As discussed above in finding B.1, the Department performs the programmatic functions formerly performed by the Interagency Committee. This includes technical reviews of applications and exemption requests. Therefore, we find that the proposed deletions will not make Illinois' regulations less effective than the counterpart Federal regulations.

*C. 62 IAC 1773.13 Public Participation in Permit Processing*

1. Illinois revised 62 IAC 1773.13(a)(1)(B) to require that the map or description of the proposed permit area published as part of the public notice advertising a permit, revision, or renewal application include the shadow area for underground mines. If the application includes a shadow area, the applicant must differentiate between the permit area and shadow area on the map or in the description. Illinois defines "shadow area" to mean "any area beyond the limits of the permit area in which underground mine workings are located."

The counterpart Federal regulation at 30 CFR 773.6(a)(1)(ii) does not specifically require the applicant to include the area over underground workings on the map or in the description. However, by specifying only the minimum contents of the advertisement, the Federal regulation at 30 CFR 773.6(a)(1) allows regulatory authorities to require applicants to include in the advertisement any additional information that they consider necessary. Therefore, we find that Illinois' revision will not make 62 IAC 1773.13(a)(1)(B) less effective than the counterpart Federal regulation at 30 CFR 773.6(a)(1)(ii).

2. Illinois revised 62 IAC 1773.13(a)(2) to require the applicant to file an additional copy of any changes to the permit application with the Department. The Department will then forward the additional copy to the county clerk at the courthouse where the permit application is filed. The corresponding Federal regulation at 30 CFR 773.6(a)(2) requires the applicant to

file any changes to the application with the public office at the same time the change is submitted to the regulatory authority. Accessibility to local residents is the intent behind this local filing requirement. We find that Illinois' revised regulation is no less effective than the Federal regulation in meeting this intent. Therefore, we are approving the revision to 62 IAC 1773.13(a)(2).

*D. 62 IAC 1773.15 Review of Permit Applications*

Illinois revised 62 IAC 1773.15(a)(1) by restructuring its existing requirements and adding a new provision at paragraph (a)(1)(B)(i) that requires the applicant to submit modifications to the Department within one year of being notified of the need for them. If the applicant does not submit the required modifications to the Department within one year, the Department will issue a written finding denying the application. The Department may issue an extension to this time limit if the applicant can demonstrate just cause for doing so. Examples of just cause include extended periods of illness, extreme inclement weather, acts of civil unrest, or other emergency situations.

Although there is no exact Federal counterpart to the new provision, the corresponding Federal regulation at 30 CFR 773.7(a) allows the regulatory authority discretion to establish a reasonable time for processing permits. Thus, we find that Illinois' revisions will not make 62 IAC 1773.15(a)(1) less effective than the corresponding Federal regulation.

*E. 62 IAC 1777.17 Permit Fees*

Illinois restructured and redesignated the existing provisions at subsections (a) through (c) as new subsections (b) through (d). Illinois revised and redesignated existing subsection (d) as new subsection (e). Illinois then added a new provision at subsection (a). The new provision at subsection (a) and the revised provision at subsection (e) read as follows:

(a) After a permit application under 62 Ill. Adm. Code 1772 through 1785 has been deemed approvable, but before a permit is issued in accordance with 62 Ill. Adm. Code 1773.19, the Department shall notify the applicant in writing of the amount of fee required for the permit.

(e) Failure to submit permit fees within 1 year after notification of the required fee amount shall result in the application being deemed null and void. The Department may issue an extension to this time limit if the applicant can demonstrate just cause (e.g., extended periods of illness, extreme inclement weather, acts of civil unrest, or other emergency situations) for doing so.

The Federal regulation at 30 CFR 777.17 requires a permit application to be accompanied by a fee determined by the regulatory authority. It also allows the regulatory authority to develop procedures for the method of payment. We find that the new provision at 62 IAC 1777.17(a) and the revised provision at 62 IAC 1777.17(e) are consistent with these Federal requirements.

*F. 62 IAC 1778.15 Right of Entry Information*

Illinois removed a reference to planned subsidence operations from subsection (e). As revised, this subsection requires applicants, claiming to have valid existing rights to conduct surface coal mining operations within an area where mining is prohibited or limited, to submit specified information in their permit applications.

There is no Federal counterpart to Illinois regulation at 62 IAC 1778.15(e). However, we find that removal of the reference to planned subsidence operations from 62 IAC 1778.15(e) does not adversely affect other aspects of the Illinois program and is not inconsistent with the right of entry provisions of the Federal regulations at 30 CFR 778.15.

*G. 62 IAC 1785.23 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area*

Illinois proposes to revise 62 IAC 1785.23(d)(4) by removing a reference to the "Interagency Committee" and adding a reference to "other state agencies." The revised paragraph reads as follows:

Other state agencies deemed appropriate by the Department shall be given copies of the application and provided 30 days from the date of receipt to submit comments.

Illinois originally adopted 62 IAC 1785.23 to take into account the distinct differences between surface and underground mining. This category of facilities, which includes air shafts, fan and ventilation buildings, small support buildings or sheds, access power holes, and other small structures, would be subject to an abbreviated permit application and review period on the basis that these types of structures have a very minimal impact on the land and the environment. There is no Federal counterpart to these previously approved provisions.

Illinois removed the reference to the "Interagency Committee" because Illinois Public Act 90-0490 abolished the Interagency Committee in an amendment to 225 ILCS 720/1.05. As discussed above in finding B.1, the

Department has the authority under 225 ILCS 720/9.04 to delegate responsibilities, other than final action on permits, to other State agencies with the authority and technical expertise to carry out such responsibilities. This includes the review of permit applications. While there is no direct Federal counterpart to 62 IAC 1785.23, we find that the revision to paragraph (d)(4) is not inconsistent with the permit application review provisions of 30 CFR 773.6.

*H. 62 IAC 1800.11 Requirement to File a Bond*

Illinois is revising 62 IAC 1800.11(a) to require the Department to notify a permit applicant in writing of the amount of bond required to ensure reclamation of the permit area. The permit applicant then has one year to submit a performance bond. The Department will consider the permit application null and void if the applicant does not submit the bond within the time specified. The Department may issue an extension of the time limit if the applicant can demonstrate just cause for doing so. Examples of just cause include extended periods of illness, extreme inclement weather, acts of civil unrest, or other emergency situations.

Although the Federal regulation at 30 CFR 800.11(a) does not include these provisions, we find that they are not inconsistent with the Federal requirements for filing a performance bond.

*I. 62 IAC 1800.40 Requirement to Release Performance Bonds*

At 62 IAC 1800.40, Illinois reversed the order of the provisions in existing subsections (d) and (e) and revised them as discussed below.

1. Redesignated subsection (d) concerns the right that specified persons have to file objections to a proposed bond release. Illinois is revising this subsection by adding language to specify that these persons also have the right to file "a written request for hearing." Illinois added this language to clarify that a public hearing must be requested.

Although the counterpart Federal regulation at 30 CFR 800.40(f) does not contain the proposed language, it does indicate that a hearing must be requested. Thus, we find that 62 IAC 1800.40(d) is no less effective than the counterpart Federal regulation.

2. Redesignated subsection (e) concerns the right that the permittee, the surety, and any person with an interest in collateral posted as a bond have to request a hearing if the

Department disapproves an application for release of bond. Illinois revised this subsection to provide these persons with an opportunity to request an administrative hearing in accordance with the procedures of 62 IAC 1847.3. Currently, Illinois provides an opportunity for a public hearing.

The counterpart Federal regulation at 30 CFR 800.40(d) also provides these persons with an opportunity for a public hearing. However, Illinois' allowance for a formal administrative hearing will provide an increased level of due process for those persons most affected by a final decision to disapprove a bond release application. Therefore, we find that Illinois' regulation at 62 IAC 1800.40(e) is no less effective than the counterpart Federal regulation.

*J. 62 IAC 1816.113 (Surface Mining) and 62 IAC 1817.113 (Underground Mining) Revegetation Timing*

Illinois is adding a new provision at subsection (b) to establish a time frame for the planting of trees and shrubs. Illinois is requiring trees and shrubs to be planted within two years after replacement of the plant-growth medium. Illinois' regulations at 62 IAC 1816.117 and 1817.117 require that vegetation for areas to be developed for fish and wildlife habitat (including shelter belts), recreation, and forest products include tree and shrub populations and vegetative ground cover.

The counterpart Federal regulations at 30 CFR 816.113 and 817.113 concerning revegetation timing do not contain a specific time frame for the planting of trees and shrubs. However, Illinois' proposal would allow sufficient time for vegetative ground cover to become well established before the trees and shrubs are planted. By requiring that trees and shrubs be planted within two years, the provision ensures contemporaneous reclamation for areas to be developed for fish and wildlife habitat (including shelter belts), recreation, and forest products. Therefore, we find that a two-year time frame is reasonable for the planting of trees and shrubs. Thus the proposed provision at 62 IAC 1816.116(b) and 1817.117(b) will not make Illinois' regulations less effective than the counterpart Federal regulations.

*K. 62 IAC 1816.117 (Surface Mining) and 62 IAC 1817.117 (Underground Mining) Revegetation-Tree, Shrub, and Herbaceous Wildlife Vegetation*

Illinois added new subsection (e) to its regulations at 62 IAC 1816.117 and 1817.117 to provide a standard for measuring revegetation success for areas reclaimed to herbaceous vegetation.

1. The first provision in new subsection (e) specifies that vegetative ground cover of approved species must not be less than required to achieve the approved postmining land use for areas where herbaceous vegetation plants are used for fish and wildlife habitat (including shelter belts) or recreation land uses. The herbaceous vegetation must also be adequate to control erosion, and must not be less than 70 percent during the last year of the responsibility period.

Although the Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii) do not contain specific standards for measuring the revegetation success of herbaceous vegetation, they do specify that vegetative ground cover must not be less than that required to achieve the approved postmining land use. In the preamble for the Federal regulations (48 FR 40152, September 2, 1983), we noted that the regulations were written in a general form because of the variation in natural ground cover conditions throughout the States. We further indicated that each State would either need to require the use of reference areas, to specify minimum levels of ground cover as a percentage of surface area, or to adopt some other acceptable standard. The additional standards proposed by Illinois are acceptable for determining revegetation success of herbaceous vegetative ground cover for fish and wildlife habitat (including shelter belts) and recreation land uses. Therefore, we find that this provision at 62 IAC 1816.117(e) and 1817.117(e) is no less effective than the counterpart Federal requirements for ground cover success.

2. Illinois also added a provision to subsection (e) that allows the Department to approve planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas, which increase diversity within wildlife areas, on a case-by-case basis before these areas are planted.

The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require minimum stocking and planting arrangements to be specified by the regulatory authority on the basis of local and regional conditions. Therefore, we find that the proposed provision will not make Illinois' regulations at 62 IAC 1816.117(e) and 1817.117(e) less effective than the Federal regulations.

*L. 62 IAC 1816.190 Affected Acreage Map*

Illinois revised 62 IAC 1816.190(b) to require that areas affected by auger mining must be shown on the annual affected acreage reports and maps.

Currently, Illinois requires only that the reports and maps show affected surface areas.

There are no direct counterpart Federal regulations that require permittees to submit affected acreage reports and maps. However section 517(b)(1) of SMCRA provides that “the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, \* \* \* and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary.” Therefore, we find the proposed revision to 62 IAC 1816.190(b) would not make the Illinois regulations inconsistent with SMCRA or the Federal regulations.

#### *M. 62 IAC 1817.64 Use of Explosives-General Performance Standards*

Illinois revised 62 IAC 1817.64(c) by replacing the existing language with the following language:

(c) All blasting shall be conducted between sunrise and sunset unless nighttime blasting is approved by the Department based upon a showing by the operator that the public will be protected from adverse noise and other impacts. Protection from adverse noise may include alternatives to the audible warning requirement specified in Section 1817.66(b). The Department may specify more restrictive time periods for blasting.

As revised, 62 IAC 1817.64(c) contains substantively the same standards for the use of explosives as the counterpart Federal regulation at 30 CFR 817.64(c). Therefore, we find that Illinois’ regulation is no less effective than the counterpart Federal regulation.

#### *N. 62 IAC 1817.66 Use of Explosives-Blasting Signs, Warnings, and Access Control*

Illinois revised 62 IAC 1817.66(b) by removing the following sentence: “The requirement to supply daily notice may be fulfilled by the audible warning signals.”

As revised, 62 IAC 1817.66(b) is substantively identical to the counterpart Federal regulation at 30 CFR 817.66(b). Therefore, we find that Illinois’ regulation is no less effective than the counterpart Federal regulation.

#### *O. 62 IAC 1825.14 High Capability Lands*

Illinois revised 62 IAC 1825.14(e)(2) to require permittees to do soil compaction alleviation on lands reclaimed to high capability standards unless it can be shown that the productivity standards of 62 IAC 1816.116(a)(3)(C) have been, or could be, met without compaction alleviation

on areas reclaimed in a similar manner. Illinois’ regulation at 62 IAC 1816.116(a)(3)(C) provides the productivity standards for revegetation success of cropland areas.

There are no direct Federal counterparts to Illinois’ regulations for high capability lands. However, we find that the revisions proposed at 62 IAC 1825.14(e)(2) concerning soil compaction alleviation do not adversely affect other aspects of the Illinois program and are not inconsistent with the topsoil and subsoil provisions of the Federal regulations at 30 CFR 816.22 and 817.22.

#### *P. 62 IAC 1843.13 Suspension or Revocation of Permits*

Illinois revised 62 IAC 1843.13(c) by adding a new paragraph at (c)(3) that requires the Department to notify the surety or other bond holder in writing when it issues a show cause order to the permittee.

The counterpart Federal regulation at 30 CFR 843.13 does not contain this requirement. However, we find that notifying the surety or other bond holder of a show cause order is not inconsistent with any of the requirements of the counterpart Federal regulation.

#### *Q. 62 IAC 1847.3 Permit and Related Administrative Hearings*

Illinois revised 62 IAC 1847.3(a) to clarify that the procedures outlined in this section also apply to review of bond release decisions under 62 IAC 1847.9(i). Illinois also added a provision that provides that a request for hearing is deemed filed the day it is received by the Department. Illinois’ regulation at 62 IAC 1847.3 consolidates the procedures for most of the formal reviews provided for in the Illinois program. Illinois’ regulation at 62 IAC 1847.9 provides for a public hearing on applications for bond release. It allows persons who either filed written objections to the bond release or were a party to the public hearing to request an administrative hearing on the Department’s final decision on the bond release application in accordance with the procedures of 62 IAC 1847.3.

The Federal regulations at 30 CFR 800.40 do not specifically provide for administrative hearings for decisions pertaining to bond release. However, the Federal regulations at 43 CFR 4.1280-4.1286 do allow appeals from Federal decisions that are not required by SMCRA to be determined by formal adjudication. Therefore, we find that allowing formal administrative hearings for decisions pertaining to bond release is not inconsistent with the Federal

regulations. We also find that Illinois’ provision concerning the filing date of a hearing request is consistent with the Federal filing requirements for documents initiating hearing proceedings at 43 CFR 4.1107(f).

#### *R. 62 IAC 1847.9 Bond Release Public Hearings*

Illinois revised 62 IAC 1847.9 to provide a public hearing for bond releases. Currently Illinois only provides an administrative hearing for bond releases in this section. The Department will use the provisions in this revised section for public hearings on proposed bond releases. The Department will serve each party who participated in the public hearing with the Department’s final bond release decision. Then the participants may request an administrative hearing on the Department’s final decision in accordance with the procedures in 62 IAC 1847.3.

The Federal regulation at 30 CFR 800.40 also provides for public hearings on proposed bond releases. The Federal regulations specify general provisions that States must include in their public hearing procedures, but allow the States discretion in how to implement these provisions. We find that Illinois’ provisions for public hearing at 62 IAC 1847.9 are consistent with the Federal requirements at 30 CFR 800.40(f) and (g) for public hearings on proposed bond releases.

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

#### *Public Comments*

We asked for public comments on the amendment, but did not receive any.

#### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record No. IL-5073A). The Natural Resources Conservation Service responded on November 8, 2001 (Administrative Record No. IL-5074), that it had no exception to any of the amendments.

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

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from the 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 the EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IL-5073A). 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 October 25, 2001, we requested comments on Illinois' amendment (Administrative Record No. IL-5073A), but neither responded to our request.

**V. OSM's Decision**

Based on the above findings, we approve the amendment as submitted by Illinois on October 15, 2001, and as revised on March 6, 2002.

We approve the regulations proposed by Illinois with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 913, which codify decisions concerning the Illinois program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

**VI. Procedural Determinations**

*Executive Order 12630—Takings*

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

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget 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 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

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

*National Environmental Policy Act*

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

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

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

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 11, 2002.

**Charles E. Sandberg,**

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

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

Original amendment submission date	Date of final publication	Citation/description
October 15, 2001 .....	May 17, 2002 .....	62 IAC 1700.11(a), (b); 1700.12(a), (d); 1773.12; 1773.13; 1773.15(a), (b), (c); 1777.17; 1778.15(e); 1780.21(a), (b), (e), (f), (g), (i), (j); 1784.14(a), (e); 1785.23(d), (e); 1800.11(a); 1800.40(a), (c), (d), (e); 1816.41(c), (d), (e); 1816.113(b); 1816.116(a); 1816.117(a), (c), (d), (e); 1816.190(b); 1817.64; 1817.66(b); 1817.113(b); 1817.116(a); 1817.117(a), (c), (d), (e); 1825.14(a), (b), (e); 1843.13(a), (c), (d); 1846.17(b); 1847.3(a), (b), (e), (f), (i), (j); 1847.9.

3. Section 913.17 is amended by revising the section heading to read as follows:

**913.17 State regulatory program provisions and amendments not approved.**

\* \* \* \* \*

[FR Doc. 02-12461 Filed 5-16-02; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD01-01-188]**

**RIN 2115-AA97**

**Safety and Security Zones; High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, RI**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is extending the effective period of the safety and security zones published on December 12, 2001. This change will extend the effective date of the temporary final rule from June 15, 2002, until September 15, 2002, allowing adequate time for the Coast Guard to develop a permanent rule. This rule will continue to prohibit vessels from entering into these prohibited zones unless authorized by the Captain of the Port, Providence, Rhode Island, or an authorized representative.

**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 a new entry in chronological order by “Date of final publication” to read as follows:

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

\* \* \* \* \*

**DATES:** The amendment to § 165. T01–188 is effective May 17, 2002. Section 165. T01–188, added at 66 FR 64144, December 12, 2001, effective October 6, 2001 until June 15, 2002, is extended in effect until September 15, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT David C. Barata, at Marine Safety Office Providence, at (401) 435–2335.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On December 12, 2001, we published a temporary final rule (TFR) entitled “Safety And Security Zones: High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, Rhode Island” in the **Federal Register** (66 FR 64144). The effective period for this rule was from October 6, 2001, through June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original TFR was urgently required to prevent possible terrorist strikes against high interest vessels within and adjacent to Rhode Island Sound, Narragansett Bay, and the Providence and Taunton Rivers. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing

security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment within the Captain of the Port (COTP) Providence Zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule were intended to facilitate ongoing response efforts and prevent future terrorist attack. The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule. This revision preserves the status quo within the Port while permanent rules are developed. Since the start of the effective date of this regulation in October, 2001, approximately six high interest vessel transits have occurred under these temporary regulations. Disruptions to waterway users have been minimal and no complaints have been received.

**Background and Purpose**

Terrorist attacks against the World Trade Center in Manhattan, New York on September 11, 2001 inflicted catastrophic human casualties and property damage. The threat of terrorism remains high. We believe that high interest vessels continue to require a higher degree of security than was