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[FR Doc. 01-29370 Filed 11-26-01; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL-101-FOR]

Illinois Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is 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). The Illinois Department of Natural Resources, Office of Mines and Minerals (Illinois or Department) proposes revisions to and additions of regulations concerning 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, affected acreage, use of explosives, high capability lands, suspension or revocation of permits, and public and administrative hearings. Illinois also proposes to correct or remove outdated references in several regulations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

This document gives the times and locations that the Illinois program and the 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: Written comments must be received by 4 p.m., e.s.t., December 27, 2001. If requested, we will hold a public hearing on the amendment on December 24, 2001. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on December 12, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests

to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses 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 Field Office.

Andrew R. Gilmore, Director,
Indianapolis Field Office, Office of
Surface Mining, Minton-Capehart
Federal Building, 575 North
Pennsylvania Street, Room 301,
Indianapolis, IN 46204, Telephone:
(317) 226-6700.

Illinois Department of Natural
Resources, Office of Mines and
Minerals, Land Reclamation Division,
300 W. Jefferson Street, Suite 300,
Springfield, IL 62701, Telephone
(217) 782-4970.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director,
Indianapolis Field Office. Telephone:
(317) 226-6700. Internet:
IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

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 in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated October 15, 2001 (Administrative Record No. IL-5073), Illinois sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Illinois

sent the amendment at its own initiative. Illinois proposes to amend its surface coal mining and reclamation regulations at Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Miscellaneous Revisions

1. Illinois proposes to delete references to the “interagency committee” from 62 IAC 1700.11(b), 1773.12, 1780.21(f)(3)(D)(v), 1784.14(e)(3)(C)(v), and 1785.23(d)(4). Illinois is removing these references because the interagency committee was abolished by Illinois Public Act 90-0490 in 1997.

2. Illinois is removing its current office address from and adding a reference to the “Department's Springfield office” in 62 IAC 1700.12(a), 1780.21(a), 1784.14(a), 1816.116(a)(2)(C) and (5)(A), 1817.116(a)(2)(C) and (5)(A), and 1846.17(b)(1). Illinois is proposing these revisions so the regulations will not have to be corrected because of future address changes.

3. Illinois is correcting citation references and simplifying its use of numbers in 62 IAC 1700.11, 1700.12, 1773.13, 1777.17, 1780.21, 1785.23, 1825.14, 1843.13, and 1846.17.

B. 62 IAC 1773.12 Regulatory Coordination With Requirements Under Other Laws

Illinois proposes to remove the language from 62 IAC 1773.12 that required the Interagency Committee on Surface Mining Control to review permit applications and provide comments and recommendations for coordination with requirements under other laws. Illinois proposes to add the following provision to address how it currently provides for the coordination of review and issuance of permits with requirements under other laws.

The Department shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of State laws and regulations and the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); and Executive Order 11593.

C. 62 IAC 1773.13 Public Participation in Permit Processing

1. Illinois is revising 62 IAC 1773.13(a)(1)(B) to require the applicant for a permit or revision application to include a map or description in the newspaper advertisement required under paragraph (1) that clearly shows or describes the precise location and boundaries of the proposed permit area and shadow area for underground mines, if applicable. If the application includes a shadow area, the map or description must differentiate between the permit area and shadow area.

2. Illinois is proposing to revise 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 forward this copy to the clerk at the courthouse of the county where the mining is proposed to occur.

D. 62 IAC 1773.15 Review of Permit Applications

Illinois is revising 62 IAC 1773.15(a)(1) to read as follows:

(1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and, either

(A) Issue a written decision, in accordance with Section 1773.19, either granting or denying the application. If a public hearing is held under Section 1773.14, the decision shall be made within 60 days after the close of the public hearing, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3) below; or

(B) Issue a written decision requiring modification of the application. If a public hearing is held under Section 1773.14, the decision to require modifications shall be made within 60 days after the close of the public hearing.

(i) If the applicant does not submit the required modifications to the Department within one year of the date of receipt of notification of the need for modifications, the Department shall issue a written finding in accordance with Section 1773.19 denying the application. The Department may issue an extension to this time limit if the applicant can demonstrate just cause for doing so.

(ii) Upon receipt of the applicant's responses to the required modifications, the Department shall review the responses and issue a written decision, in accordance with Section 1773.19, either granting or denying the application.

E. 62 IAC 1777.17 Permit Fees

1. Illinois is redesignating the existing provisions at subsections (a) through (d) as new subsections (b) through (e). Illinois is then adding the following new provision at subsection (a):

(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 Section 1773.19, the Department shall notify the applicant in writing of the amount of fee required for the permit.

2. Illinois is proposing to revise the introductory paragraph of newly designated subsection (c) by adding the language "are payable as a lump sum or in equal annual increments for the permit term and." Illinois is removing similar language from subsection (c)(1). As proposed revised subsections (c) and (c)(1) read as follows:

(c) Permit fees are payable as a lump sum or in equal annual increments for the permit term and shall be determined as follows:

(1) The permit fee for areas to be surface mined is \$125.00 per bonded acre;

3. Illinois proposes to revise newly designated subsection (e) to read as follows:

(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 for doing so.

F. 62 IAC 1778.15 Right of Entry Information

Illinois proposes to remove a reference to planned subsidence operations from subsection (e).

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) to read as following:

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.

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.

I. 62 IAC 1800.40 Requirement To Release Performance Bonds

Illinois proposes to revise 62 IAC 1800.40 by reversing the order of the provisions in existing subsections (d) and (e).

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 clarify that these persons also have the right to request a public hearing.

2. Redesignated subsection (e) concerns the right that specified persons have to request a hearing if the Department disapproves an application for release of bond. Illinois is revising this subsection by removing the language that allowed an opportunity for a public hearing and replacing it with the following language that allows an administrative hearing:

The permittee, the surety, and any person with an interest in collateral as provided for in Section 1800.21(e) may request an administrative hearing on the disapproval of bond release by filing a request for hearing in accordance with the procedures set forth in 62 Ill. Adm. Code 1847.3.

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.

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

Illinois proposes to revise 62 IAC 1816.117 and 1817.117 by adding the following standard for measuring revegetation success for areas reclaimed to herbaceous wildlife to new subsection (e):

(e) For areas where herbaceous vegetation plants are used for fish and wildlife habitat (including shelter belts), or recreation land uses, vegetative ground cover of approved species shall not be less than required to achieve the approved post-mining land use and shall be adequate to control erosion and shall not be less than 70% during the last year of the responsibility period. Planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas.

L. 62 IAC 1816.1907 Affected Acreage Map

Illinois is revising 62 IAC 1816.190(b) to require that areas affected by auger mining must be shown on the annual affected acreage map.

M. 62 IAC 1817.64 Use of Explosives—General Performance Standards

Illinois is revising 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.

N. 62 IAC 1817.66 Use of Explosives—Blasting Signs, Warnings, and Access Control

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

O. 62 IAC 1825.14 High Capability Lands

Illinois is revising 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.

P. 62 IAC 1843.13 Suspension or Revocation of Permits

Illinois is revising 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.

Q. 62 IAC 1847.3 Permit and Related Administrative Hearings

Illinois is revising 62 IAC 1847.3(a) to clarify that the procedures outlined in this section apply to, among other things, review of bond release decisions under 62 IAC 1847.9(i). Illinois is also adding the following provision at the end of the paragraph: "A request for hearing is deemed filed the day it is received by the Department."

R. 62 IAC 1847.9 Bond Release Public Hearings

Illinois is revising 62 IAC 1847.9 to clearly differentiate between a public hearing and an administrative review hearing for bond release decisions. The Department will use the provisions in this section for public hearings on proposed bond releases.

1. At subsection (b), Illinois added the word "public" between the words "bond release" and "hearings."

2. Illinois removed the provision at existing subsection (c) concerning a pre-hearing conference and redesignated existing subsection (d) as new subsection (c).

3. Illinois removed the provision at existing subsection (e) concerning a settlement agreement and added the following new provision at new subsection (d):

(d) The Department shall appoint a hearing officer to conduct the hearing. The hearing officer shall be a licensed attorney or an employee of the Department. The hearing officer shall conduct a fair hearing and shall take all necessary action to avoid delay, to maintain order, and to develop a clear and complete record. He or she shall have all powers necessary to these ends, including but not limited to the power to change the time and place of the hearing and adjourn the hearing from time to time or from place to place within the county of the surface coal mining and reclamation operation and to give due notice of such action consistent with the notice requirement of subsection (c).

4. Illinois removed the provision at existing subsection (f) concerning a summary disposition and added the following new provision at new subsection (e):

(e) The hearing shall be informal.

(1) All participants in the public hearing shall have the right to be represented by counsel, or by some other authorized representative.

(2) The hearing officer shall allow the applicant and any interested persons to present data, views or arguments relevant to the bond release application.

(3) Where necessary in order to prevent undue prolongation of the hearing, the hearing officer shall establish a time period during which the participants shall be heard. Every effort will be made to allow all persons who wish to make a statement to do so.

(4) A verbatim transcript of the hearing shall be maintained by a court reporter appointed by the Department, and shall constitute a part of the record. Copies of the transcript shall be furnished, at cost, upon request to the court reporter. Such record shall be maintained by the Department and shall be accessible to the public at the Department's Springfield Office until final release of the applicant's reclamation performance bond.

(5) The record shall remain open for additional written statements responsive to statements or other documents for 10 days following the close of the hearing, or for such other reasonable time as the hearing officer may direct.

5. Illinois removed the provision at existing subsection (g) concerning burden of proof and added a new provision at new subsection (f) to provide that the hearing need not be held if the hearing request is withdrawn.

6. Illinois is redesignating existing subsection (h) as new subsection (g).

Illinois is revising the second sentence to require the record of a public hearing to be maintained and available to the public until at least 60 days after the Department's final decision on the bond release application.

7. Illinois is redesignating existing subsection (i) as new subsection (h) and revising the provision to require the Department to issue and serve its bond release decision, by certified mail, to each party who participated in the hearing.

8. Illinois is removing the provisions in existing subsections (j) and (k).

9. Illinois is redesignating existing subsection (l) as new subsection (i) and revising it to read as follows:

(i) Any person with a valid legal interest who either filed written objections to the bond release or were a party to the public hearing may request an administrative hearing on the Department's final decision on the bond release application by filing a request for hearing in accordance with the procedures set forth in 62 Ill. Adm. Code 1847.3.

III. Public Comment Procedures

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

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (*see ADDRESSES*).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. IL-101-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 Field Office at (317) 226-6700.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Indianapolis Field Office (*see ADDRESSES*). Individual respondents may request that we withhold their home address from the administrative

record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection 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 December 12, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

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

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may 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 also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

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

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 under SMCRA.

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, to the extent allowed by law, 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 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 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

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 25, 2001.

John W. Coleman,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01-29452 Filed 11-26-01; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV059-6017; FRL-7108-4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revisions to the Ozone Maintenance Plan for the Huntington-Ashland Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision amends West Virginia's ten-year plan to maintain the national ambient air quality standard (NAAQS) for ozone in the Huntington-Ashland area. The maintenance plan is being amended to implement contingency measures in response to recorded violations of the 1-hour ozone NAAQS, and to revise the motor vehicle emission sub-budgets for the West Virginia counties (Cabell and Wayne) that are located in the Huntington-Ashland area. This action is being taken under the Clean Air Act (the Act).

DATES: Written comments must be received on or before December 27, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this

action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814-2179, or via e-mail at cripps.christopher@epa.gov. While clarifying questions may be posed via e-mail, formal comments must be submitted, in writing, as indicated in the ADDRESSES section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

The Huntington-Ashland area includes Wayne and Cabell Counties in West Virginia, and Boyd County and a portion of Greenup County in Kentucky. On December 21, 1994 (59 FR 65719), EPA approved the State of West Virginia's request to redesignate the Huntington-Ashland moderate ozone nonattainment area to attainment, and also approved West Virginia's 10-year plan for continued maintenance of the 1-hour ozone NAAQS in the Huntington-Ashland area as a revision to the West Virginia SIP. On June 29, 1995 (60 FR 33748), EPA approved the Commonwealth of Kentucky's request to redesignate the Huntington-Ashland moderate ozone nonattainment area to attainment, and also approved the Commonwealth's 10-year plan for continued maintenance of the 1-hour ozone NAAQS in the Huntington-Ashland area as a revision to the Kentucky SIP. While the maintenance plans submitted and approved for these two states cover the entire nonattainment area, each plan contains its own set of contingency measures.

Each state's maintenance plan also identifies and establishes the applicable motor vehicle emission budgets (MVEBs) for its portion of the Huntington-Ashland area to which the area's transportation improvement program and long range transportation plan must conform. Conformity to MVEBs in the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The Huntington-Ashland maintenance plan identifies and establishes the applicable MVEBs for Cabell and Wayne Counties for both volatile organic compounds (VOC) and nitrogen oxides (NO_x), which are precursors of ground level

ozone, for the years 1996, 1999, 2002 and 2005.

A provision of the West Virginia maintenance plan requires the state to adopt contingency measures in the event of a violation of the 1-hour ozone NAAQS. In 1998, the West Virginia side of the Huntington-Ashland area violated the 1-hour ozone NAAQS. In 1998, however, at the time of the violation, the 1-hour ozone NAAQS had been revoked (or made not applicable) by EPA in all areas that had attained the standard, including the Huntington-Ashland area. In July 2000 (65 FR 45181), EPA reinstated the 1-hour ozone NAAQS and notified West Virginia that it is required to implement the contingency measures contained in the SIP-approved maintenance plan to address the violation that occurred in 1998.

On September 25, 2001, the West Virginia Department of Environmental Protection (WVDEP) submitted a request that EPA parallel process revisions to the West Virginia SIP's 1-hour ozone maintenance plan for the Huntington-Ashland area. West Virginia's maintenance plan is being amended to implement contingency measures in response to recorded violations of the 1-hour ozone NAAQS, and to revise the applicable MVEBs for Cabell and Wayne Counties. The proposed SIP revision consists of new requirements to control VOC emissions from marine tank vessel loading operations and revised MVEBs for VOC and NO_x for the years 2002 and 2005. This rulemaking does not propose to amend Kentucky's maintenance plan for the Huntington-Ashland area.

II. Summary of West Virginia's SIP Revision Submittal

A. Control of VOC Emissions from Marine Tank Vessels

West Virginia is implementing controls on marine tank vessel loading operations as a new control measure to prevent against future violations of the 1-hour ozone NAAQS. The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Marine Tank Vessel Loading Operations [40 CFR part 63, subpart Y] was adopted and effective in September 1995, and sources were required to comply with the emission limits by September 1999. These standards establish and require reasonably available control technology (RACT) to limit VOC emissions and maximum achievable control technology (MACT) standards to limit hazardous air pollutants from new and existing marine tank vessel loading operations. West Virginia has adopted these federal requirements into its state code at Code of State Regulation 45-34-