

regulation did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 1, 2002.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

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#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[WV-096-FOR]

#### West Virginia 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 are announcing a proposed amendment to the West Virginia regulatory program (the "West Virginia program") under the Surface Mining Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the West Virginia Surface Coal Mining and Reclamation Act as contained in House Bill 4163. The amendment provides additional definition of commercial forestry and forestry. It also revises provisions for premining and postmining land use, required infrastructure, water supply, soil, soil placement and grading, bond release, and prime farmlands. Additionally, the amendment alters sections of West Virginia's bonding program performance standards, and Small Operator Assistance Program. Finally, the amendment proposes an entirely new section of the West Virginia program providing an exemption for coal extraction incidental to extraction of other minerals. The amendment is intended to improve the effectiveness of the West Virginia program.

This document gives the times and locations that the West Virginia 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 4:00

p.m., e.s.t. July 8, 2002. If requested, we will hold a public hearing on the amendment on July 1, 2002. We will accept requests to speak until 4:00 p.m., e.s.t. on June 21, 2002.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to West Virginia Field Office Director Mr. Roger W. Calhoun at the address listed below.

You may review copies of the West Virginia program, this 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 Charleston Field Office.

Mr. Roger W. Calhoun, Director, West Virginia Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158. Internet address: [chfa@osmre.gov](mailto:chfa@osmre.gov).

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143. Telephone: (304) 759-0515.

The proposed amendment will be posted at the West Virginia Department of Environmental Protection's Internet page: <http://www.dep.state.wv.us>.

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507. Telephone: (304) 291-4004. (By appointment only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801. Telephone: (304) 255-5265.

#### FOR FURTHER INFORMATION CONTACT:

Roger W. Calhoun, Telephone: (304) 347-7158. Internet address: [chfa@osmre.gov](mailto:chfa@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Period
- IV. Procedural Determinations

#### I. Background on the West Virginia 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 the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 1, 1981 **Federal Register** (46 FR 5915-5956). You can also find later actions concerning West Virginia program and program amendments at 30 CFR 948.13, 948.15, and 948.16.

#### II. Description of the Proposed Amendment

By letter dated December 20, 2000 (Administrative Record Number WV-1191), the West Virginia Department of Environmental Protection (WVDEP) submitted responses to required regulatory program amendments that we, the Office of Surface Mining (OSM) informed them of by letter dated August 15, 2000 (Administrative Record Number WV-1178). WVDEP sent another letter, dated April 9, 2000 (Administrative Record Number WV-1296), indicating that House Bill 4163 had been approved by the West Virginia Legislature. The bill amended 38 Code of State Regulations (CSR) 2 to make several changes to existing rules and created the Coal Related Dam Safety Rule at 38 CSR4. West Virginia submitted the proposed amendment to satisfy the relevant required program amendments.

We are not requesting comments on the amendment at CSR 38-2-12.5.d. The change to that provision will be announced in a separate **Federal Register** notice. As such, this proposed amendment is not part of WV-096-FOR and will not be addressed as such.

You will find West Virginia's program amendment presented below.

#### Generally

The word "Director" is replaced with "Secretary."

The term "performance bond(s)" is changed to "bond(s)."

The word "Division" is replaced with "Department."

*W.Va. Code 38-2-2. Definitions*

At section 2.28.g. the word “Division” is replaced with “Department.”

At section 2.31.b.1. the definition of “Forestry” is amended by adding the phrase “for the production of wood or other wood products.” The amended definition reads, “Forestry, as used in subsection 7.4 of this rule, means a long-term postmining land use for the production of wood or wood products designed to accomplish the following.”

In addition, at section 2.43, the definition of “Director” is deleted in its entirety.

*W.Va. Code 38-2-7. Premining and Postmining Land Use*

At section 7.4.b.1.C.5, the words “and shall be subject to the requirements of subsection 5.5 of this rule, except for ponds and impoundments located below the valley fills” have been deleted. In the same subsection, “Any pond or impoundment left in place is subject to requirements under subsection 5.5 of this rule” is added. As proposed, the subsection reads as follows:

(C)(5) For forestry, all ponds and impoundments, except for ponds and impoundments located below the valley fills created during mining shall be left in place after bond release. Any pond or impoundment left in place is subject to requirements under subsection (5)(5) of this rule. The substrate of the ponds and wetlands must be capable of retaining water to support aquatic and littoral vegetation.

Subsection 7.4.b.1.C.7 is amended by adding “O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.” Without this amendment, the section reads, “Soil is defined as and shall consist of the O, A, E, B, C, and Cr horizons.”

Section 7.4.b.1.G is amended as follows. At subsection G.1, “excessive” is deleted to read, “\* \* \* Secretary may approve lesser or no vegetative cover when tree growth and productivity will be enhanced and sedimentation will not result.” The following sentence has also been added, “Lesser or no vegetative cover may only be authorized by the Secretary when mulch or other soil stabilizing practices have been used to protect all undisturbed areas unless demonstrated that the reduced cover is sufficient to control erosion and air

pollution attendant to erosion regardless of slope.”

Section 7.4.b.1.G.3 is amended by adding “and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of the water quality standards for the receiving stream” directly after “The permittee may regrade and reseed only those rills and gullies that are unstable. \* \* \*.”

Section 7.4.b.1.I.2 is amended by deleting “where there is potential for excessive erosion on slopes greater than 20%” from the third sentence. Also, the word “and” is removed from in front of “organic litter” in the third sentence and “except where a lesser vegetation cover has been authorized” is added after “organic material; followed by a deletion of “and rock cover”. This sentence is amended to read as follows:

Furthermore, for both commercial forestry and forestry, there shall be 70% ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter, except where a lesser vegetation cover has been authorized, and at least 80% of all trees and shrubs used to determine re-vegetation success must have been in place for at least 60% of the applicable minimum period of responsibility.

Subsection 7.4.b.1.I.3 is amended by deleting “Additionally” at the beginning of the third sentence and replacing it with “Above and beyond all other standards in effect.”

Section 7.5.i.1.B is amended by adding “meet the primary road requirements of section 2.4 of this rule,” to the second sentence directly after “State Department of Highways standards.”

Section 7.5.i.3.Q is amended by adding “The reservoir is subject to requirements under subsection 5.5 of this rule” as the last sentence.

Section 7.5.i.10 is amended by adding “Any pond or impoundment left in place is subject to requirements under subsection 5.5 of this rule” as the last sentence.

Section 7.5.j.3.A is amended by adding “O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.” Without this amendment, the section reads, “Soil is defined as and shall consist of the O, A, B, C, and Cr horizons.”

Section 7.5.j.6.B is amended by adding “and/or disrupt the approved

postmining land use or the establishment of vegetative cover or cause or contribute to a violation of the water quality standards for the receiving stream.” To “The permittee may regrade and reseed only those hills and gullies that are unstable.”

Section 7.5.0.2 is amended to add “and” before “organic litter” and delete “and rock cover” after “organic litter” in the second sentence.

New subsection 10.4.a.1.D is added to read as follows:

a.1.D. The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, constructed during mining and reclamation must be located within the post reclamation non-prime farmland portions of the permit area. The creation of such water bodies must be approved by the Department of Environmental Protection and have the consent of all affected property owners within the permit area.

*W.Va. Code 38-2-11. Insurance and Bonding*

Section 11.5, “Open Acre Limit Bonding,” and all 11.5 subsections are deleted in their entirety. Thus, 11.6 is renumbered accordingly as “11.5.”

At renumbered section 11.5, “After January 1, 1994” is deleted from the beginning of the fourth paragraph. In addition, “or mid-term review, whichever occurs first” is deleted from the first sentence of the last paragraph. Also, the last sentence, “The existing bond may be determined to be adequate only if all the following criteria are met” is deleted along with the subsections a.1-5, “Open Acre Limit Bonding,” which follows. Finally, the final paragraph of the subsection is deleted as well.

*W.Va. Code 38-2-12. Replacement, Release, and Forfeiture of Bonds*

Section 12.5.e is amended in the first sentence by deleting “one thousand nine hundred ninety-three” and replacing it with “two thousand and two and every year thereafter.”

*W. Va. Code 38-2-14. Performance Standards*

Section 14.12.a.1 is amended by deleting “commercial forestry,” from the list of suitable land uses.

Section 14.15.a.1 is amended by deleting “with all highwalls eliminated” from the first sentence. In addition, “W.Va. Code 22-3-13.c.2 with all highwall eliminated” is added as the end of the first sentence.

Section 14.15.a.2 is amended by adding “throughout,” such that the last reads “areas throughout the life of the operation.”

Sections 14.15.b.6.B.1–2 are deleted in their entirety. In addition, a new subsection, B.1 is added as follows:

B.1. Pre-stripping or benching operations cannot exceed four hundred (400) acres for any single permit and cannot precede dragline operations more than twenty-four (24) months unless otherwise approved by the Secretary or necessary to satisfy AOC+ requirements, specific post-mining land use requirements or special materials handling facilities requirements. All fill construction must occur during this phase of operation and be conducted in accordance with subdivision 14(15)(d) of this rule.

Also, subsection B.3 is renumbered accordingly as new “B.2.”

Section 14.15.d is amended by deleting the entire section and replacing it as follows:

(d) Excess Spoil Disposal Fills. All fills must be constructed contemporaneously and contiguously with that segment of the operations that contains the material that is designated to be placed in the fill. In addition to all other standards in effect, the following shall apply to excess spoil disposal fills.

Subsection 14.15.d.1 is amended by deleting the entire second paragraph.

Subsection 14.15.d.2 is amended by deleting the second paragraph.

Subsection 14.15.e is renumbered to “14.15.f.”

Subsection 14.15.f is amended by deleting the current language in its entirety, renumbering to “g,” and adding the following:

15.g. Variance—Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the standards set forth in this subsection, if on the basis of the site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible. The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.

The following subsections are renumbered: 14.15.g is renumbered to “14.15.h;” 15.h is renumbered to “15.j;” 15.i to “15.k;” 15.j to “15.l;” 15.k to “15.m;” 15.l to “15.n;” and 15.m to “15.o.”

*W.Va. Code 38–2–17. Small Operator Assistance Program*

Section 17.3.b.2 is amended by deleting “five” and replacing it with “ten” percent.” In addition, “5” is changed to “10.”

Section 17.4 is changed by adding as the last sentence, “Each application for assistance shall include the following information;” and new subsections a-f.2 are added to read as follows:

- 17.4.a. A statement of the operator’s intent to file a permit application;
- b. The names and addresses of:
  - b.1. The permit applicant; and
  - b.2. The operator if different from the applicant
- c. A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant. The schedule shall include for each location:
  - c.1. The operator or company name under which coal is or will be mined;
  - c.2. The permit number and Mine Safety and Health Administration (MSHA) number;
  - c.3. The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant; and
  - c.4. The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.
- d. A description of:
  - d.1. The proposed method of coal mining;
  - d.2. The anticipated starting and termination dates of mining operations;
  - d.3. The number of acres of land to be affected by the proposed mining operation; and
  - d.4. A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.
- e. A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:
  - e.1. The area of land to be affected;
  - e.2. The location of any existing or proposed test borings; and
  - e.3. The location and extent of known workings of any underground mines.
- f. Copies of documents which show that:
  - f.1. The applicant has a legal right to enter and commence mining within the permit area; and
  - f.2. A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

Section 17.6.a is amended by adding “, institution,” before “or analytical laboratory.” Also, after “laboratory,” the following language is added, “that can provide the required determination of a probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified under the Small Operator Assistance Program and that.”

A new section of code is proposed at W.Va. Code 38–2–25. Exemption for Coal Extraction Incidental to Extraction of Other Materials. It would read:

- 25.1. Exemption determination. No later than 90 days after filing of an administratively complete request for exemption, the Secretary shall make a written determination whether, and under what conditions, the persons claiming the

exemption are exempt under this part, and shall notify the person making the request and persons submitting comments on the application of the determination and the basis for the determination. The determination of exemption shall be based upon information contained in the request and any other information available to the regulatory authority at that time. If the Secretary fails to provide a determination as specified in this section, extraction may commence pending a determination on the request.

25.2. Contents of request for exemption. An request for exemption shall be made part of a quarrying application and shall include at a minimum:

25.2.a. The names and business address of the requestor to include a street address or route number

25.2.b. A list of the minerals to be extracted;

25.2.c. Estimates of annual production of coal and the other minerals over the anticipated life of the operation;

25.2.d. A reasonable estimate of the number of acres of coal that will be extracted;

25.2.e. Evidence of publication of a public notice. The notice shall be published in a newspaper of general circulation in the county in which the operation is located and shall be published once and provide a thirty day comment period. The public notice must contain at a minimum:

25.2.e.1. The quarrying number identifying the operation.

25.2.e.2. A clear and accurate location map of a scale and detail found in the West Virginia General Highway Map. The map size will be at a minimum four inches (“4”). Longitude and latitude lines and north arrow will be indicated on the map and such lines will cross at or near the center of the quarrying operation;

25.2.e.3. The names and business address of the requestor to include a street address or route number;

25.2.e.4. A narrative description clearly describing the location of the quarrying operation.

25.2.e.5. The name and address of the Department of Environmental Protection Office where written comments on the request may be submitted;

25.2.f. Geologic cross sections, maps or plans of the quarrying operation determine the following information:

25.2.f.1. The locations (latitude and longitude) and elevations of all bore holes;

25.2.f.2. The nature and depth of the various strata or overburden including geologic formation names and/or geologic members;

25.2.f.3. The nature and thickness of any coal or other mineral to be extracted;

25.2.g. A map of appropriate scale which clearly identifies the coal extraction area versus quarrying area;

25.2.h. A general description of coal extraction and quarrying activities for the operation;

25.2.i. Any other information pertinent to the qualification of the operation as exempt.

25.3. Requirements for exemption.

25.3.a. Activities are exempt from the requirements of the Act if all of the following are satisfied:

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

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

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

25.3.b.1. Each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is quarried in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

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

#### 25.4. Conditions of exemption.

A person conducting activities covered by this part shall:

25.4.a. Maintain on-site the information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and the Department's exemption approval;

25.4.b. Notify the Department of Environmental Protection upon the completion of all coal extraction activities.

#### 25.5. Stockpiling of Minerals.

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

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

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

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

The Department of Environmental Protection may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

25.5.b.1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

25.5.b.2. Except as provided in paragraph (b)(3) of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

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

25.5.b.4. The Department of Environmental Protection may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b)(2) and (3) of this section based on additional information available to the Department of Environmental Protection.

#### 25.6. Revocation and enforcement.

25.6.a. The Department of Environmental Protection shall conduct an annual compliance review of the operation requesting exemption.

25.6.b. If the Department of Environmental Protection has reason to believe that a specific operation was not exempt at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department of Environmental Protection shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption will be revoked unless the operator demonstrates to the Department of Environmental Protection within 30 days that the operation in question should continue to be exempt.

25.6.c. If the Department of Environmental Protection finds that an operator has not demonstrated that activities conducted in the operation area qualify for the exemption, the Department of Environmental Protection shall notify the operator.

#### 25.7. Reporting requirements.

25.7.a.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file a quarterly production report with the Department of Environmental Protection containing the information specified in paragraph (b) of this section.

25.7.a.2. The report shall be filed no later than 30 days after the end of each quarter.

25.7.a.3. The information in the report shall cover:

25.7.a.3.A. Quarterly production of coal and other minerals, and

25.7.a.3.B. The cumulative production of coal and other minerals.

25.7.a.3.C. The number of tons of coal stockpiled.

25.7.a.3.D. The number of tons of other minerals stockpiled.

### III. Public Comment Period

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 Kentucky Field 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: SPATS No. WV-096-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 West Virginia Field Office at (304) 347-7158.

#### 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 June 21, 2002. 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*

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 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 2, 2002.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 02-14078 Filed 6-5-02; 8:45 am]

**BILLING CODE 4310-05-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA 182-4196b; FRL-7224-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The purpose of this SIP is to request a one-year extension of the Federal deadline for incorporating checks of on-board diagnostic (OBD) systems on 1996-and-newer vehicles to the Commonwealth's motor vehicle inspection and maintenance (I/M) program. EPA's I/M requirements regulations required states to add OBD checks to their I/M programs by January 1, 2002. However, states had the option to submit a request to EPA for a delay, of up to one additional year, of the deadline to add OBD system checks to the I/M program. Pennsylvania's SIP revision contains a request for the maximum one-year delay allowed by EPA, or until January 1, 2003.

In the Final Rules section of this **Federal Register**, EPA is approving Pennsylvania's SIP request as a direct final rule without prior proposal, because the Agency views this as a noncontroversial SIP request and anticipates no adverse comments. A more detailed description of the Commonwealth's request and a detailed rationale for EPA's granting of the requested deadline extension is set forth in the direct final rule.

If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties

interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by July 8, 2002.

**ADDRESSES:** Written comments should be addressed to David 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. These documents are also available from the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814-2176, or by e-mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 29, 2002.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 02-14036 Filed 6-5-02; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-1290, MB Docket No. 02-132, RM-10374]

#### Digital Television Broadcast Service; Montgomery, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a joint petition filed by Alabama Educational Television Commission, licensee of station WAIQ(TV) and LibCo, licensee of station WSFA(TV), proposing the substitution of DTV channel 14 for DTV

channel 57; and the substitution of DTV channel \*27 for DTV \*14. DTV Channel 14 can be allotted to Montgomery at reference coordinates 31-58-28 N. and 86-09-44 W. with a power of 600, a height above average terrain HAAT of 530 meters. DTV channel \*27 can be allotted to Montgomery at reference coordinates 32-22-55 N. and 86-17-33 W. with a power of 750, a height above average terrain HAAT of 183.

**DATES:** Comments must be filed on or before July 25, 2002, and reply comments on or before August 9, 2002.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in *broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Washington, DC 20036-6802 (Counsel for LibCo); and Jacqueline P. Cleary, Hogan & Hartson, LLP, 555 13th Street, NW., Washington, DC 20004-1109.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02-132, adopted May 29, 2002, and