

By letter dated February 26, 2002, WVDEP sent us a status report regarding the required program amendments codified at 30 CFR 948.16

(Administrative Record Number WV-1276). The report included 14 attachments, and outlined actions taken in an attempt to satisfy the required program amendments. The actions include proposed policies, rules and laws, form changes, and referrals to legal staff. In addition, WVDEP stated that law and rule changes that would satisfy some of the required amendments would be proposed during the 2002 regular legislative session, and that none of the proposed revisions would be implemented without OSM approval. In the end, the State failed to pass legislation on the required program amendments codified at 30 CFR 948.16(nnn) concerning the use of an unjust hardship criterion in support of granting temporary relief of an order, (ooo) concerning economic feasibility related to appeals to the Environmental Quality Board concerning the WVSCMRA, and (oooo) concerning coal removal incidental to development.

By letter dated March 8, 2002, WVDEP sent us revisions to two of the attachments it had sent us in its February 26 letter (Administrative Record Number WV-1280). The March 8, 2002, letter also included one new attachment intended to address the required amendment at 30 CFR 948.16(sss) relating to water supply replacement waivers.

In the March 25, 2002, **Federal Register** (67 FR 13577-13585), we reopened the comment period to provide the public an opportunity to review and comment on the topics discussed in the January 15, 2002, meeting; WVDEP's February 26 and March 8, 2002, submittals; and related information that we provided to WVDEP (Administrative Record Number WV-1285). The comment period closed on April 9, 2002.

In our May 1, 2002, decision (67 FR 21904) on these amendments, we removed all of the required amendments, including the required amendments at 30 CFR 948.16(nnn), (ooo), and (oooo) where the State failed to take legislative action, and the required amendment at 30 CFR 948.16(sss) where the State committed to implementing its program consistent with the Federal law and regulations despite the existing State language being inconsistent with Federal provisions.

Need for the Correction

On January 9, 2003, the United States District Court for the Southern District of West Virginia in *West Virginia*

Highlands Conservancy v. Norton, Civil Action No. 2:00-1062 (S.D. W.Va. Jan. 9, 2003), vacated OSM's decisions to remove the required program amendments codified in the Federal regulations at 30 CFR 948.16(nnn), (ooo), (sss), and (oooo).

To implement this decision, we are amending the Federal regulations at 30 CFR 948.16 to reinstate the required program amendments at (nnn), (ooo), (sss), and (oooo) that we deleted in the May 1, 2002, **Federal Register**. We are requiring that within 60 days of publication of this notice, West Virginia must submit either proposed amendments or descriptions of amendments together with timetables for enactment that will satisfy these required amendments.

Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because, consistent with the Court's opinion, this rule merely reinstates required program amendments that the Court remanded to OSM for reconsideration. Therefore, opportunity for prior comment is unnecessary and we are issuing this regulation as a final rule.

In addition, under 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of this final rule because we are merely restoring required program amendments that the court remanded to OSM for reconsideration.

Dated: January 28, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

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

2. Section 948.16 is amended by adding paragraphs (nnn), (ooo), (sss), and (oooo) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(nnn) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B-1-7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3, of the West Virginia Code.

(ooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B-1-7(h) by removing reference to Article 3, Chapter 22.

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(sss) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR § 38-2-14.5(h) and § 22-3-24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of "Replacement of water supply," paragraph (b), at 30 CFR 701.5.

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(oooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR § 38-2-23.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[WT Docket No. 01-90; ET Docket No. 98-95; RM-9096; FCC 02-302]

Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band (5.9 GHz Band)

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: In this document the Federal Communications Commission incorporates into the licensing and service rules for the 5.9 GHz band, issues raised in two petitions for reconsideration filed in response to the Allocation Report and Order because the issues raised in them address issues concerns the licensing and services rules. As a consequence, the Commission dismisses the two petitions as moot and incorporates them into the