

Reservoirs', TR-60, in accordance with the emergency spillway hydrograph criteria in the 'Minimum Emergency Spillway Hydrologic Criteria' table in TR-60, or larger event specified by the Department."

Because a new subsection D(3)(c) is proposed, the State proposes to change subsection D(3)(b) by removing the period at the end of the sentence and adding a semicolon followed by the word "or." With approval, the proposed changes, subsections E through I will change to F through J, respectively, but would otherwise remain unchanged.

We are approving these revisions to the Maryland program as they are no less effective than the counterpart Federal regulations at 30 CFR 816.49(a)(9)(ii)(A) and 817.49(a)(9)(ii)(A). The revisions make Maryland's language substantively the same as Federal language and are in response to the July 8, 1997, 732 issue letter requirements.

COMAR 26.20.21.09

Maryland proposes changes to COMAR 26.20.21.09D, which relates to the examination of impoundments. Subsection D(1) currently states: "(1) Impoundments subject to 30 CFR 77.216 shall be examined in accordance with 30 CFR 77.21-3. Other impoundments shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions."

The new COMAR section 26.20.21.09D(1) reads: "(1) Impoundments meeting the Class (b) or (c) criteria for dams in 'Earth Dams and Reservoirs', TR-60 or the size or other criteria of 30 CFR 77.216 shall be examined in accordance with 30 CFR 77.216-3. Other impoundments not meeting the Class (b) or (c) criteria for dams in 'Earth Dams and Reservoirs', TR-60 or subject to 30 CFR 77.216 shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions."

We are approving this revision to the Maryland program, as it is substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 816.49(a)(12) and 817.49(a)(12). Maryland is making these revisions to its program in order to be consistent with Federal regulations and as a result of OSM's July 8, 1997, 732 issue letter requirements.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. MD-577-25), 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 Maryland program (Administrative Record No. MD-577-22). We received one comment. This comment from the USDA's NRCS, noted that the proposed changes were consistent with the NRCS's performance standards for impoundments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. MD-577-24). EPA did not respond to our request. Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required.

State Historic 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 December 10, 2002, we requested comments on Maryland's amendment through the Maryland Historical Trust (Administrative Record No. MD-577-22), but received no response to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Maryland sent us. We approve, as discussed in the findings above: COMAR 26.20.02.13 U, concerning the elimination of the phrase "excess spoil disposal structure" and the addition of the phrase "siltation structure"; V(1)(a) an addition to the enumerated criteria and (3) concerning the added reference to the USDA NRCS (formerly the Soil Conservation Service) Technical Release No. 60 (TR-60) and the deletion of the phrase "excess spoil

disposal structure at V(1)" and by deleting "or embankment is 20 feet or higher or impounds more than 20 acre-feet" at V(3); AA(1) referencing COMAR 26.20.26; a new COMAR subsection "26.20.21.01-1" concerning an incorporation by reference to (TR-60); 26.20.21.08 A(1) through (3) concerning an incorporation by reference to Maryland NRCS Conservation Practice, Standard Pond 378 (January 2000), and a new subsection referencing the (TR-60) "Minimum Emergency Spillway Hydrologic Criteria Table", B(1) and (2) referencing the (TR-60) "Earth, Dams and Reservoirs", a reference to subsection B(1) and non coal mine waste impoundments, and deleting the reference to 26.17.05.05B(3) at subsection A, and also deleting at subsection A and B, the phrase "if impoundments do not meet the size or other criteria of 30 CFR 77.216(a) and are located where failure would not be expected to cause loss of life or serious property damage"; a new subsection C pertaining to "Freeboard", renumbering section D(2) and E(3) and 26.20.21.09D(1) regarding "examinations of impoundments".

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

To implement this decision, we are amending the Federal regulations at 30 CFR part 920, which codify decisions concerning the Maryland 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 Maryland's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of Maryland 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