

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

*Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 that 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. For the reasons previously stated, 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**

Surface mining, Underground mining.

Dated: June 27, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

**PART 917—Kentucky**

■ 1. The authority citation for part 917 continues to read as follows:

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

**§ 917.16 [AMENDED]**

■ 2. Section 917.16 is amended by removing and reserving paragraph (d)(2). [FR Doc. 03–18100 Filed 7–16–03; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 920**

**[MD–048–FOR]**

**Maryland 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 a proposed amendment to the Maryland regulatory program (the “Maryland program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Maryland proposed revisions to and additions of rules about descriptions of proposed mining operations, impoundments, and inspection and certification of impoundments.

**EFFECTIVE DATE:** July 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: 412–937–2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Maryland Program
- II. Submission of the Proposed Amendment
- III. OSM’s Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. Procedural Determinations

**I. Background on the Maryland 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 Maryland program on December 1, 1980. You can find background information on the

Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (47 FR 79431). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15 and 920.16.

## II. Submission of the Proposed Amendment

By letter dated November 25, 2002, Maryland sent us an amendment to its program (Administrative Record No. MD-577-21) under SMCRA (30 U.S.C. 1201 *et seq.*) in response to the issuance of an OSM 732 letter dated July 8, 1997. Specifically, Maryland was required to amend several sections of the Code of Maryland Regulations (COMAR) including sections 26.20.02.13, 26.20.21.01, 26.20.21.08, and 26.20.21.09, relative to: Detailed design plans, siltation structures, and impoundments and the reference to the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Technical Release No. 60 (criteria for dam classification).

We announced receipt of the proposed amendment in the March 25, 2003, **Federal Register** (68 FR 14360). 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 April 24, 2003. We did not receive any public comments.

## 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. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes. The full text of the changes can be found in the March 25, 2003, **Federal Register** (68 FR 14360).

Maryland proposed revisions to the following sections of COMAR in order to be consistent with the corresponding Federal regulations. Because these proposed rules contain language that is the same or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

### COMAR 26.20.02.13

Maryland proposed to amend its regulations at Subsection U of COMAR 26.20.02.13 so that each application includes a "general plan for each

proposed siltation structure, sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed mine plan area." The Federal regulations at 30 CFR 780.25(a) and 784.16(a) require that each application include "a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area."

Although subsection U of the State regulation does not refer to "a detailed design plan" as does the Federal regulation, a detailed design plan is required by the State under subsection V. Maryland proposed to amend Subsection V(1) so that, like the Federal regulations, it requires a detailed design plan for "each proposed siltation structure, sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed mine plan area."

Maryland also proposed to add a new subsection V(1)(a) that requires the design plan to be designed in compliance with COMAR 26.20.21.06 and .08, which provide performance standards for siltation structures and impoundments, respectively.

The deletion of the phrase, "excess spoil disposal structure" in the current subsection, and the replacement of this phrase with, "siltation structure" before the term "sedimentation pond" in the new subsection, make Maryland's rules substantively identical to the Federal rules at 30 CFR 780.25 and 784.16 which require siltation structures and sedimentation ponds to be designed in compliance with performance standards. The deletion of the reference to excess spoil does not render the Maryland program less effective because Maryland has permitting and performance standards for excess spoil at COMAR 26.20.02.13 AA and 26.20.26.01 respectively. Also the current subsection, (a)-(d) becomes subsections (b)-(e). The renumbering of the sections is purely administrative in nature.

We are approving these revisions, as they are no less effective than the Federal regulations.

Maryland also proposes revisions to subsection (3). The current subsection reads:

"(3) If a sedimentation pond, water impoundment, or coal processing waste dam or embankment is 20 feet or higher or impounds more than 20 acre-feet, the plan shall contain a stability analysis of each structure. The stability analysis shall include but not be limited to

strength parameters, pore pressures, and long-term seepage conditions.

The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods."

Maryland is substituting the following: "or embankment is 20 feet or higher or impounds more than 20 acre-feet" with "or siltation structure that meets the Class (b) or (c) criteria for dams in the USDA, Soil Conservation Service Technical Release No. 60, (October 1985), as incorporated by reference in COMAR 26.20.21.01-1 or meets the size or other criteria of 30 CFR 77.216(a)." The deleted language is not a requirement of the Federal regulations.

This subsection is substantively identical to 30 CFR 780.25(f) and 784.16(f).

We find these revisions to be no less effective than Federal regulations and are approving the revisions.

Maryland proposes revisions to subsection AA(1). Subsection AA requires descriptions of excess spoil disposal sites. Subsection AA(1) currently reads:

"Descriptions, including appropriate maps and cross-section drawings, of any proposed excess spoil disposal site and design of the spoil disposal structures. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures."

Revision of the first paragraph of subsection AA(1) reads: "Each application shall contain descriptions including appropriate maps and cross-section drawings, of any proposed excess spoil disposal site and design of the spoil structures in accordance with COMAR section 26.20.26."

We are approving this revision because it is substantively identical to 30 CFR 780.35(a). The reference to section 26.20.26, makes Maryland's program no less effective than 30 CFR 780.14(c) and 784.23(c) by clarifying that only registered professional engineers may certify designs for excess spoil fills. This is in accordance with item #3 of OSM's July 8, 1997, issue letter.

### COMAR 26.20.21

Maryland proposes a new COMAR subsection 26.20.21.01-1:01-1 which reads, "Incorporation by Reference, The U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs," Technical

Release No. 60 (TR-60) is incorporated by reference.”

We are approving this revision as the incorporation of the reference to the TR-60 makes Maryland's program no less effective than Federal regulations incorporation by reference to the same TR-60, at 30 CFR 780.25(a)(2) and 784.16(a)(2).

#### *COMAR 26.20.21.08*

Maryland proposes several revisions to COMAR subsection 26.20.21.08. First, Maryland proposes to revise subsection 26.20.21.08A, which lists the general requirements for impoundments. Under the current regulations, the first requirement is that impoundments be designed and constructed to ensure:

(1) Compliance with USDA, Soil Conservation Service, Standards and Specifications for Ponds (Code 378), July, 1981, as incorporated by reference in COMAR subsection 26.17.05.05B(3), if impoundments do not meet the size or other criteria of 30 CFR Section 77.216(a) and are located where failure would not be expected to cause loss of life or serious property damage.

The revised COMAR section 26.20.21.08A(1) reads as follows: “(1) Compliance with USDA, Natural Resources Conservation Service, Maryland Conservation Practice, Standard Pond 378 (January 2000), as incorporated by reference in COMAR 26.17.02.01-1B(2).”

We are approving this revision because Code 378 addresses Class A Hazards. There is no direct Federal counterpart and we find it is not inconsistent with the Federal regulations at 30 CFR 816.49 and 817.49.

Maryland also proposes to revise the second requirement of subsection A. The new requirement reads as follows: “(2) Compliance with requirements of COMAR 26.17.04.05 if the embankment is more than 15 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway.”

We are approving this revision to the Maryland program as it is not inconsistent with the Federal regulations. Maryland also proposes a new subsection (3) referencing:

“Impoundments meeting the Class (b) or (c) criteria for dams in Earth Dams and Reservoirs, TR-60 shall comply with “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60 and the requirements of this regulation.”

We are approving this revision as it is substantively identical to and no less effective than the Federal counterpart under 30 CFR 816.49(a)(1) and 817.49(a)(1).

Maryland also proposes changes to subsection B of COMAR 26.20.21.08, which addresses the stability of impoundments. COMAR section 26.20.21.08B(1) currently requires that: “(1) Impoundments meeting the size or other criteria of 30 CFR 77.216(a), located where failure would be expected to cause loss of life or serious property damage, or a coal mine waste impounding structure, shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.”

The language addition states: “(1) Impoundments meeting the Class (b) or (c) criteria for dams contained in “Earth Dams and Reservoirs”, TR-60 or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.”

The deleted language does not render the Maryland program inconsistent with the Federal regulations because loss of life or serious property damage is a hazard criterion for Class C impoundments. Additionally, the deletion of the phrase “coal mine waste impounding structure” is not inconsistent with Federal regulations because Maryland has performance standards for coal mine waste impounding structures at COMAR 26.20.27.11. We are approving this revision to the Maryland program as it is substantively identical to the Federal regulations at 30 CFR 816.49(a)(4)(i) and 817.49(a)(4)(i). The revision is therefore no less effective than the Federal counterpart regulations.

COMAR section 26.20.21.08B(2) currently requires that: “(2) Except for coal mine waste impounding structures and impoundments located where failure would be expected to cause loss of life or serious property damage, impoundments not meeting the size or other criteria of 30 CFR 77.216(a) shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.”

Maryland proposes to make revisions to section 26.20.21.08B(2), which read: “(2) Impoundments not included in Section B(1) of this regulation, except for coal mine waste impounding structures shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.”

The deleted language does not render the Maryland program inconsistent with the Federal regulations because loss of life or serious property damage is a

criteria for Class C impoundments referenced in subsection B(1). We are approving these proposed revisions to the Maryland program, as they are substantively identical to and no less effective than Federal regulations at 30 CFR 816.49(a)(4)(ii) and 817.49(a)(4)(ii).

Maryland also proposes a new COMAR section 26.20.21.08.C, which reads:

“C. Freeboard. (1) Impoundments shall have adequate freeboard to resist overtopping by waves and sudden increases in storage volume. (2) Impoundments meeting the Class (b) or (c) criteria for dams in “Earth Dams and Reservoirs”, TR-60 shall comply with the freeboard hydrograph criteria in “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60. Subsequently, the current subsections C and D would therefore become subsections D and E, respectively.”

D. Foundation. The current subsection C(2) now reads: “(2) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.”

Subsection C(2) becomes D(2) and reads:

“(2) For an impoundment meeting the Class (b) or (c) criteria for dams contained in “Earth Dams and Reservoirs”, TR-60 or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.”

We are approving these proposed revisions to the Maryland program because they are substantively the same and no less effective than the Federal regulations at 30 CFR 816.49(a)(5)-(6) and 817.49(a)(5)-(6) regarding Freeboard and Foundation. Maryland is revising this section as a result of the July 8, 1997, issue letter requirements.

Maryland proposes changes to COMAR 26.20.21.08D. As noted above, the proposed addition of a new subsection C changes the current subsection D to E with approval of the proposed changes. Further, the State proposes changes to the current subsection D(3). Currently subsection D(3) contains subsections (a) and (b), which contain the required design precipitation event for impoundments meeting the spillway requirements of the section. The State proposes to add a new subsection D(3)(c): “(c) For impoundments meeting the Class (b) or (c) criteria for dams in “Earth Dams and

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

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 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

#### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 that 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 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 27, 2003.

#### **Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR 920 is amended as set forth below:

#### **PART 920—MARYLAND**

■ 1. The authority citation for part 920 continues to read as follows:

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

■ 2. Section 920.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

#### **§ 920.15 Approval of Maryland regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
November 25, 2002	July 17, 2003	COMAR 26.20.02.13 U, V(1) and (3), AA(1); 26.20.21.01-1; 26.20.21.08 A(1) through (3), B(1) and (2), C, D(2), E(3); 26.20.21.09D(1).

[FR Doc. 03-18101 Filed 7-16-03; 8:45 am]  
 BILLING CODE 4310-05-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 100, 117, and 165**

[CGD09-03-208]

RIN 1625-AA08  
 RIN 1625-AA09  
 RIN 1625-AA00

**Toledo Tall Ships Parade, July 16, 2003, Port of Toledo, OH**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations, including an exclusionary area and spectator anchorage areas, a regulated navigation area, as well as drawbridge regulations for the Parade of Sail Toledo 2003 in the Port of Toledo, Ohio, on July 16, 2003. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event. These regulations are intended to restrict vessel traffic from a portion of Lake Erie and the Maumee River.

**DATES:** This rule is effective from 9 a.m. on July 16, 2003 through 5 p.m. on July 20, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09-03-208 and are available for inspection of copying at U.S. Coast Guard Marine Safety Office (MSO) Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, MSO Toledo, at (419) 418-6050.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On May 20, 2003, we published a notice of proposed rule making (NPRM)

entitled Toledo Tall Ships Parade 2003, Port of Toledo, OH in the **Federal Register** (68 FR 27498). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

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**. Delaying the effective date of this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event.

**Background and Purpose**

These temporary special local regulations are for the Toledo 2003 Tall Ships Parade of Sail that will be held in the Maumee River from 9 a.m. through 7 p.m. on July 16, 2003. These regulations will assist in providing for the safety of life on navigable waters and to protect commercial vessels, tall ships, spectators, and the Port of Toledo during this event.

American Sail Training Association is sponsoring Sail Toledo 2003. The scheduled events will occur July 16, 2003 in the Port of Toledo and surrounding waters. This event will consist of a Parade of Sail from the mouth of the Maumee River to Independence Park. The parade route will originate in Maumee Bay and continue inbound up the Maumee Bay and Maumee River channel to various berths throughout the Port of Toledo.

The Coast Guard expects several hundred spectator crafts to attend the parade of sail and tall ship celebration. The regulations will create temporary anchorage regulations and vessel movement controls through the regulated area. The regulations will be in effect from 9 a.m. through 7 p.m. on July 16, 2003. Vessel congestion, due to the anticipated large number of participating and spectator vessels, introduces extra or unusual hazards during this event pose a significant threat to the safety of life. This rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

The Coast Guard is establishing regulated areas in the Maumee River that will be in effect during the Toledo Parade of Sail 2003 event. These regulated areas are needed to permit unrestricted law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with the dense vessel traffic.

The regulated area will cover all portions of the Maumee River upriver of a line drawn between north-east corner of Grassy Island at 41°42'24" N, 083°26'48" W and the south-west corner of Spoil area at 41°42'17" N, 083°26'38" W to the downriver side of the Anthony Wayne Bridge. All coordinates are based upon North American Datum 1983 (NAD 83). This temporary regulated area would be in effect from 9 a.m. through 7 p.m. on July 16, 2003.

On July 16, 2003, following the Parade of Sail, restrictions on vessels on the Maumee River will reopen in sequence with the movement and mooring of the final flotilla of tall ships. After the final flotilla of tall ships have passed the Martin Luther King, Jr. Bridge, vessel operators anchored in spectator anchorages north of the Martin Luther King Bridge may depart for locations outside of the Maumee River. After the final flotilla of tall ships has safely moored, vessel operators may transit the Maumee River. Vessels transiting the Maumee River must proceed as directed by on-scene Coast Guard personnel.

The Coast Guard is establishing spectator anchorage areas for spectator craft. All other vessels except those viewing the Parade of Sail Toledo 2003 are restricted from using these spectator anchorages. These spectator anchorage areas will be in effect on July 16, 2003.

To ensure the safety of the participating vessels during the parade, there will be two prolonged bridge openings on July 16, 2003. The CSX railroad bridge at mile 1.07, the Norfolk & Southern railroad bridge at 1.80, the Craig Memorial bridge at mile 3.30, and the Martin Luther King Memorial (a.k.a. Cherry Street) bridge at mile 4.30 will remain open from 12 p.m. until 1:30 p.m. and then from 2 p.m. until 3:30 p.m. Having two prolonged openings