

actions specified by this AD are intended to prevent reduced structural integrity of the fuselage, possible rupture, and subsequent decompression of the airplane.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain SAAB-SCANIA Model SF340A and SAAB 340B series airplanes was published in the Federal Register on March 19, 1993 (58 FR 15116). That action proposed to require the installation of an additional protective shield between the existing heat protection and the air cycle machine in the environmental control system (ECS) compartment of the fuselage.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 188 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will be supplied by the manufacturer to operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$206,800, or \$1,100 per

airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-12-02 SAAB-SCANIA: Amendment 39-8607. Docket 93-NM-02-AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159, inclusive; Model SAAB 340B series airplanes, serial numbers 160 through 252, inclusive, and 254 through 258, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) Within 3,000 hours time-in-service after the effective date of this AD, install an additional protective shield between the existing heat protection and the air cycle machine, in accordance with SAAB 340 Service Bulletin SAAB 340-53-028, dated August 20, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with SAAB 340 Service Bulletin SAAB 340-53-028, dated August 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on June 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-14636 Filed 6-21-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 71

[Docket No. 27297, Amendment No. 91-20]

Establishment of the East Coast Low and Amendment to the Atlantic Low and South Florida Low Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Atlantic Low by redesignating a portion of the airspace area as the East Coast Low, with a floor of 2,000 feet MSL, and excludes the East Coast Low and Federal Airways from the Atlantic Low. Further, the southern boundary of the

Atlantic Low is redesignated as latitude 34°00'00" North rather than the current latitude of 28°00'00" North.

Concurrently, the northern boundary of the South Florida Low is redesignated as latitude 34°00'00" North rather than the existing latitude of 28°00'00" North. This action ensures that certain air traffic control (ATC) operations are conducted in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c. July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron I. Boxer, ATP-230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published March 2, 1993, (58 FR 12128), amended the Federal Aviation Regulations (FAR), in pertinent part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate. Further, the offshore airspace areas were divided into high and low areas. In addition to combining and simplifying the offshore airspace areas, an effort was made to establish a uniform floor of 5,500 feet MSL, to the extent practicable. However, just before the change was to become effective, it was discovered that not every specific ATC operation that requires controlled airspace could be conducted inside controlled airspace unless the offshore airspace areas were amended.

On April 5, 1993, the FAA temporarily amended the base altitude of the Atlantic Low additional control area from 5,500 feet MSL to 2,000 feet MSL. The amendment reinstated the base altitude that existed in this offshore airspace area prior to the promulgation of the Offshore Airspace Reconfiguration Final Rule. This action enabled the FAA to conduct a microreview of the ATC operations conducted within this airspace area to determine the amount of controlled airspace necessary to contain certain ATC operations. The microreview as completed on April 22, 1993, and revealed that not every instrument procedure or air traffic practice and operation on the east coast could be contained in controlled airspace without further amendment. For example, the sequencing of arrivals and departures within the New York and Boston metroplexes and providing IFR services to military aircraft transiting to/from coastal bases and the warning

areas required the amount of controlled airspace previously designated. Consequently, raising the floor of the Atlantic Low to 5,500 feet MSL would have had a significant adverse impact on traffic flow on the east coast.

On May 14, 1993, the FAA proposed to amend 14 CFR part 71 to amend the Atlantic Low by redesignating a portion of the airspace area as the East Coast Low, with a floor of 2,000 feet MSL, and to exclude the East Coast Low and Federal Airways from the Atlantic Low (58 FR 29370). Further, the FAA proposed to redesignate the southern boundary of the Atlantic Low as latitude 34°00'00" North rather than the current latitude of 28°00'00" North. Concurrently, the FAA proposed to redesignate the northern boundary of the South Florida Low as latitude 34°00'00" North rather than the existing latitude of 28°00'00" North. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

The FAA received no comments objecting to the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. The Atlantic Low and South Florida Low additional control areas were published in FAA Order 7400.7A—Supplement dated February 24, 1993, and effective April 1, 1993, which is incorporated by reference in 14 CFR 71.1. The additional control areas listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Atlantic Low by redesignating a portion of the airspace area as the East Coast Low with a floor of 2,000 feet MSL. The southwest corner of the East Coast Low will begin 12 miles from the coast of the United States approximately abeam Atlantic City, NJ and proceed northward 12 miles from and parallel to the U.S. shoreline to approximately abeam Portland, ME. At its widest point in the southeast, the area will be approximately 70 miles east of New Jersey and 50 miles south of Long Island, NY. In the area between eastern Long Island, NY, and Nantucket, MA, the southern boundary will be approximately 10 miles at the widest point. A small segment approximately five miles wide has been added between Nantucket and Chatham, MA, to accommodate instrument arrivals into Nantucket. The eastern boundary off the coasts of Massachusetts, New Hampshire, and Maine is generally a north/south line 25 miles east of Boston,

MA. The northern boundary of the South Florida Low will be moved from latitude 28°00'00" North to latitude 34°00'00" which has the effect of moving the southern boundary of the Atlantic Low to the north. This action also excludes Federal Airways from the Atlantic Low and South Florida Low. The East Coast Low will become Class E airspace effective September 16, 1993.

The FAA has determined that this regulation: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

The following amendments are to part 71 currently in effect:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.7A—Supplement dated February 24, 1993, and effective April 1, 1993, is amended as follows:

Section 71.163 Designation of Additional Control Areas

* * * * *

Atlantic Low [Revised]

That airspace extending upward from 5,500 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat. 34°00'00"N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline, excluding Federal Airways and the East Coast Low offshore airspace area.

East Coast Low [New]

That airspace extending upward from 2,000 feet MSL bounded on the west and

north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25'46"N., long. 74°02'34"W.; to lat. 39°02'05"N., long. 73°39'30"W.; to lat. 40°04'20"N., long. 72°30'00"W.; to lat. 40°37'14"N., long. 72°30'00"W.; and that airspace north of a line beginning at lat. 40°40'59"N., long. 72°17'22"W. thence along the northern boundary of warning areas W-106 and W-105 to lat. 41°06'52"N., long. 70°22'51"W.; and that airspace west of a line beginning at lat. 41°16'00"N., long. 69°41'15"W.; to lat. 41°43'00"N., long. 69°39'30"W.; and that airspace west and north of a line beginning at lat. 42°15'31"N., long. 70°00'00"W.; to lat. 43°17'00"N., long. 70°00'00"W.; to lat. 43°33'56"N., long. 69°29'12"W.

South Florida Low [Revised]

That airspace extending upward from 2,700 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00'00"N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santa Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR.

The following amendments are to part 71 in effect as of September 16, 1993:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9—Supplement dated February 24, 1993, and effective September 16, 1993, is amended as follows:

Section 71.71(e) Offshore airspace areas.

Atlantic Low [Revised]

That airspace extending upward from 5,500 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat. 34°00'00"N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline, excluding Federal Airways and the East Coast Low offshore airspace area.

East Coast Low [New]

That airspace extending upward from 2,000 feet MSL bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25'46"N., long. 74°02'34"W.; to lat. 39°02'05"N., long.

73°39'30"W.; to lat. 40°04'20"N., long. 72°30'00"W.; to lat. 40°37'14"N., long. 72°30'00"W.; and that airspace north of a line beginning at lat. 40°40'59"N., long. 72°17'22"W. thence along the northern boundary of warning areas W-106 and W-105 to lat. 41°06'52"N., long. 70°22'51"W.; and that airspace west of a line beginning at lat. 41°16'00"N., long. 69°41'15"W.; to lat. 41°43'00"N., long. 69°39'30"W.; and that airspace west and north of a line beginning at lat. 42°15'31"N., long. 70°00'00"W.; to lat. 43°17'00"N., long. 70°00'00"W.; to lat. 43°33'56"N., long. 69°29'12"W.

South Florida Low [Revised]

That airspace extending upward from 2,700 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00'00"N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santa Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR.

Issued in Washington, DC, on June 17, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93-14694 Filed 6-21-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C-0480]

Listing of Color Additives for Coloring Contact Lenses; Vinyl Alcohol/Methyl Methacrylate-C.I. Reactive Red 180 Reaction Product; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of February 9, 1993, for the final rule that amended the color additive regulations to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding the dye C.I. Reactive Red 180 [5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfoxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt] (CAS Reg. No. 98114-32-0) to the

vinyl alcohol/methyl methacrylate copolymeric lens material.

DATES: Effective date confirmed: February 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 8, 1993 (58 FR 3225), FDA amended 21 CFR part 73 by adding § 73.3127 to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding the dye C.I. Reactive Red 180 [5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfoxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt] (CAS Reg. No. 98114-32-0) to the vinyl alcohol/methyl methacrylate copolymeric lens material.

FDA gave interested persons until February 8, 1993, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the Federal Register of January 8, 1993, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the January 8, 1993, final rule. Accordingly, the amendments promulgated thereby became effective February 9, 1993.

Dated: June 14, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-14615 Filed 6-21-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Hydrologic Balance; Ponds and Sediment Control Measures; Civil Penalties

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of a proposed program amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment modifies the Code of Maryland Regulations (COMAR) dealing with hydrologic balance, ponds and sediment control measures, and civil penalties. The amendment was filed in response to the required amendments set forth at 30 CFR 920.16(b)-(g).

EFFECTIVE DATE: June 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101, Telephone (717) 782-4036.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, *Federal Register* (47 FR 7214-7217). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of Amendment

By letter dated February 7, 1992 (Administrative Record Number MD-

549.00), Maryland submitted a proposed program amendment containing modifications to the Code of Maryland Regulations (COMAR) regarding hydrologic balance, ponds and sediment control measures, and civil penalties. The amendment was intended to respond to Federal rulemaking published on August 9, 1991 (56 FR 37851), in which the Director found that certain aspects of Maryland's program were not as effective as their Federal counterparts, and required Maryland to correct these deficiencies as set forth at 30 CFR 920.16(b)-(g).

OSM announced receipt of the proposed amendment in the April 17, 1992, *Federal Register* (57 FR 13680), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 18, 1992.

By letter dated February 19, 1993 (Administrative Record Number MD-549.16), Maryland submitted additional information to both support and modify its proposed amendment. The additional information was submitted in response to an issue letter dated June 24, 1992, from OSM (Administrative Record Number MD-549.08).

OSM announced receipt of the revisions to the previously proposed amendment in the March 26, 1993, *Federal Register* (58 FR 16386) and in the same notice, reopened the public comment period and provided opportunity for a public hearing. The comment period closed on April 12, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Maryland program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. COMAR 08.13.09.23 Hydrologic Balance

Maryland, as required by 30 CFR 920.16(b), has revised COMAR 08.13.09.23E(5) to require an operator to demonstrate that the operations prevented material damage to the hydrologic balance outside the permit area, before the regulatory authority may modify surface-water monitoring requirements. However, in making this revision, Maryland eliminated the requirement that "the water rights of

other users have been protected or replaced". This requirement is part of the counterpart Federal rules as set forth at 30 CFR 816.41(e)(3). In response to an OSM request for clarification (Administrative Record Number MD-549.08), Maryland submitted a revision to this provision (Administrative Record Number MD-549.16) requiring the operator to demonstrate that postmining water quantity and quality is not adversely impacting identified water users, is not expected to adversely impact identified water users, and the water supply of any adversely impacted water users has been replaced. This revised provision is substantively identical to the Federal rule set forth at 30 CFR 816.41(e)(3). Therefore, the Director finds that the proposal is no less effective than its Federal counterpart and satisfies the requirement of 30 CFR 920.16(b).

B. COMAR 08.13.09.24 Ponds and Sediment Control Measures

1. Maryland, as required by 30 CFR 920.16(c), has revised COMAR 08.13.09.24H(11)(a) to require that an impoundment be inspected by a professional engineer or other qualified specialist experienced in the construction of impoundments. The Director finds that COMAR 08.13.09.24H(11)(a), as revised, is no less effective than the provisions of its Federal counterpart at 30 CFR 816.49(a)(10), and satisfies the requirements of 30 CFR 920.16(c).

2. Maryland, as required by 30 CFR 920.16(d), has revised COMAR 08.13.09.24H(3)(c) [formerly .24H(2)(c)], in order to clarify the engineering design standards that ensure stability comparable to 1.3 minimum static safety factor for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structures, and located where failure would not be expected to cause loss of life or serious property damage. As modified and resubmitted on February 19, 1993 (Administrative Record Number MD-549.16), the proposed rule sets forth the following engineering design standards:

- The embankment is not constructed of organic soil or clay of high plasticity; and
- The existing slope of the foundation area is not steeper than the slope provided in the following chart for the soil type to be used to construct the embankment.

Soil type	Classification	Slope
Clay (low to medium plasticity)	CL	30%
Clay-Silt Mixture	CL-ML	30%
Silt	ML	30%
Clayey Sand	SC	25%

OSM has reviewed the proposed engineering design standards, as revised in Maryland's February 19, 1993, submission and feels that the following clarifications are necessary to ensure that the design standards found in COMAR 08.13.09.24H(3)(c) will ensure stability as required in 30 CFR 780.25(c)(3).

- The soil strength values used in the stability analysis conducted by Maryland have defined dry density and optimum moisture content values associated with them. Therefore, the moisture content of the fill material should be specified as adequate to achieve the required dry density through compaction.
- The phreatic surface defined in the analysis does not appear to reflect normal pool conditions under a "worst case" scenario. Therefore, the normal pool elevation and associated phreatic surface should be justified as "worst case" conditions expected in the field.

Therefore, the Director finds that COMAR 08.13.09.24H(3)(c) remains less effective than the Federal regulations and he is not approving the proposed Maryland rule under which impoundments meeting the criteria of COMAR 08.13.09.24H(1) and H(3)(b) would be deemed to meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage condition.

Since this proposal represents an optional approach to the general rule set forth in COMAR 08.13.09.24H(3)(b), and is not required to be part of Maryland's program under 30 CFR 816.49(a)(3)(ii), no action is required of Maryland, and the required amendment at 30 CFR 920.16(d) is being removed. If Maryland wishes to include such an option in its regulations, a proposed program amendment should be submitted, which incorporates the items of clarification discussed above.

3. Maryland, as required by 30 CFR 920.16(e), has revised COMAR 08.13.09.24H by adding a new section H(8) which provides for a certified report to the Bureau after each inspection made during, and upon completion of construction, certifying that the impoundment is being constructed in accordance with the approved plan and regulations at

COMAR 08.13.09.24. Maryland was also required, pursuant to 30 CFR 920.16(e), to specify the information to be contained in the certified reports, consistent with the requirements set forth in the Federal rule at 30 CFR 816.49(a)(10)(ii). Based upon a further review of Maryland's proposal, OSM has determined that, when taken collectively, specified construction related and maintenance inspection report requirements include the full scope of items addressed in the Federal rules. The Maryland program proposals at COMAR 08.13.09.24H(11)(b) governing maintenance inspections and COMAR 08.13.09.24H(8) governing construction and post-construction inspections, in concert provide inspection report provisions as effective as the Federal rules at 30 CFR 816.49(a)(10)(ii). Therefore, the Director finds that the proposal is no less effective than its Federal counterpart and satisfies the requirements of 30 CFR 920.16(e).

4. Maryland, as required by 30 CFR 920.16(f), proposes to revise COMAR 08.13.09.24I by requiring the operator to ensure that all temporary structures are removed and reclaimed before abandoning a permit area or seeking final bond release. The Director has determined that this proposal is no less effective than its Federal counterpart at 30 CFR 816.56, and satisfies the requirement set forth at 30 CFR 920.16(f).

C. COMAR 08.13.09.41 Civil Penalties

Maryland, as required by 30 CFR 920.16(g), proposes to revise COMAR 08.13.09.41C(1) to allow a person against whom a penalty has been assessed, 30 days from the date a Notice of Proposed Assessment is served to request an assessment conference. The Director has determined that this proposal is no less effective than its Federal counterpart at 30 CFR 845.18(a), and satisfies the requirement set forth at 30 CFR 920.16(g).

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunity to request public hearings were announced in the April 17, 1992, Federal Register (57 FR 13680), and the March 26, 1993, Federal Register (58 FR 16386). The public comment periods closed on May 18, 1992, and April 12, 1993, respectively. No comments were filed and no one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Maryland program. The Fish and Wildlife Service, Soil Conservation Service, and the Maryland Historical Trust concurred in the proposed amendment.

The U.S. Corps of Engineers commented on COMAR 08.13.09.24H(1)(a), (f), (g) and (h). However, these provisions of Maryland's Ponds and Sediment Control Measures regulations were approved by the Director on August 9, 1991 (56 FR 37843), and are not part of the proposed amendment currently being considered.

V. Director's Decision

Based upon the above findings, the Director is approving, with one exception, the program amendment filed by Maryland on February 7, 1992, and revised and resubmitted on February 19, 1993. As discussed in Finding B.2. herein, the Director is not approving proposed COMAR 08.13.09.24H(3)(c).

The Federal rules at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Maryland program, the Director will recognize only the statutes, regulations

and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Maryland of only such provisions.

EPA Concurrence

In accordance with 30 CFR 732.17(h), OSM solicited EPA's concurrence in the approval of Maryland's program amendment. EPA concurred (Administrative Record Number MD-549.14) with the State's proposed amendments as they can be implemented consistent with applicable Clean Water Act (CWA) requirements. However, EPA expressed concern with COMAR 08.13.09.23E(5)(a) which discusses the conditions under which surface water monitoring may be modified. EPA pointed out that "water quality must continue to meet applicable federal and State water quality standards * * *". In addition, EPA pointed out that the provisions of COMAR 08.13.09.24H(14)(b) which provides for the creation of permanent impoundments of water should also apply to temporary impoundments, and the creation of any impoundment in the waters of the United States does not itself remove those waters from the definition of the waters of the United States under the Clean Water Act.

The Director acknowledges these concerns, but notes that neither the cited Maryland regulations nor their Federal counterparts in 30 CFR part 816, can be construed as superseding, amending or repealing the Clean Water Act. Furthermore, the Director is only approving the cited Maryland regulations with the understanding and on the basis that they do not supersede applicable CWA requirements.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the

applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since 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 the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 14, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 is revised to read as follows:

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

2. 30 CFR 920.15, is amended by adding a new paragraph (w) to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(w) The amendments submitted to OSM on February 7, 1992, and modified and resubmitted on February 19, 1993, are approved, with the exception noted herein, effective June 22, 1993. The approved amendment consists of modifications to the following Maryland regulations (COMAR):

08.13.09.23E	Surface Water Monitoring.
08.13.09.24H	Impoundments [Except for COMAR 08.13.09.24H(3)(c)].
08.13.09.24I	Postmining Rehabilitation of Sedimentation Ponds, Diversions, Im- poundments and Treatment Facilities.
08.13.09.41C	Informal Review.

§ 920.16 [Amended]

3. In 30 CFR 920.16, paragraphs (b), (c), (d), (e), (f) and (g) are removed and reserved.

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BILLING CODE 4310-05-M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 64 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the