Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, 28 CFR part 16 is amended as set forth below.

Dated: November 19, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5. U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.96 is amended by adding paragraphs (p) and (q) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation (FBI) Systems—limited access.

* * * * *

(p) The National Instant Criminal Background Check System (NICS), (JUSTICE/FBI–018), a Privacy Act system of records, is exempt:

(1) Pursuant to 5 U.S.C. 552a(j)(2), from subsections (c) (3) and (4); (d); (e) (1), (2) and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g); and

(2) Pursuant to 5 U.S.C. 552a(k) (2) and (3), from subsections (c)(3), (d), (e)(1), and (e)(4) (G) and (H).

(q) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(3). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures would place the subject on notice that the subject is or has been the subject of investigation and result in a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that it is not applicable since an exemption is claimed from subsection (d).

(3)(i) From subsections (d) and (e)(4) (G) and (H) because these provisions concern an individual's access to records which concern the individual and such access to records in the system would compromise ongoing investigations, reveal investigatory techniques and confidential informants, invade the privacy of persons who provide information in connection with a particular investigation, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from subsection (d)(2) because, to require the FBI to amend information thought to be not accurate, timely, relevant, and complete, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative burden by forcing the agency to continuously update its investigations attempting to resolve these issues.

(iii) Although the Attorney General is exempting this system from subsections (d) and (e)(4) (G) and (H), an alternate method of access and correction has been provided in 28 CFR, part 25, subpart A.

(4) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information in these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system, it is impossible to review them for relevancy.

(5) From subsections (e) (2) and (3) because the purpose of the system is to verify information about an individual. It would not be realistic to rely on information provided by the individual. In addition, much of the information contained in or checked by this system is from Federal, State, and local criminal history records.

(6) From subsection (e)(5) because it is impossible to predict when it will be necessary to use the information in the system, and, accordingly, it is not possible to determine in advance when the records will be timely. Since most of the records are from State and local or other Federal agency records, it would be impossible to review all of them to verify that they are accurate. In addition, an alternate procedure is being established in 28 CFR, part 25, subpart A, so the records can be amended if found to be incorrect.

(7) From subsection (e)(8) because the notice requirement could present a serious impediment to law enforcement by revealing investigative techniques and confidential investigations.

(8) From subsection (g) to the extent that, pursuant to subsections (j)(2), (k)(2), and (k)(3), the system is exempted from the other subsections listed in paragraph (p) of this section.

[FR Doc. 98–31502 Filed 11–24–98; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR–032–FOR]

Arkansas Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Arkansas regulatory program (Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Arkansas proposed to revise the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) concerning revegetation success standards. Arkansas also proposed to add policy guidelines for determining Phase III revegetation success for pasture and previously mined areas, cropland, forest products, recreation and wildlife habitat, and industrial/commercial and residential areas. Arkansas intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77003). You can find information on later actions concerning the Arkansas program at 30 CFR 904.12, 904.15, and 904.16.

II. Submission of the Proposed Amendment

By letter dated August 27, 1998 (Administrative Record No. AR–562), Arkansas sent us an amendment to its program under SMCRA. Arkansas proposed to amend its program in response to the November 26, 1985, and October 14, 1997, letters (Administrative Record Nos. AR–332 and AR–559.02, respectively) that we sent to Arkansas under 30 CFR 732.17(c).

We announced receipt of the amendment in the September 11, 1998, **Federal Register** (63 FR 48661). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on October 13, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to Arkansas' proposal to remove the definition of ''grazingland'' and associated references from its regulations. We discussed our concerns with Arkansas during a telephone conversation on October 6, 1998 (Administrative Record No. AR–562.06).

By letter dated October 8, 1998 (Administrative Record No. AR–562.05), Arkansas withdrew its proposal to remove the definition of ''grazingland'' from its regulations at ASCMRC 701.5. Arkansas also withdrew its proposals to remove references to the land use category of ''grazingland'' from the definition of ''renewal resource lands'' at ASCMRC 701.5 and ASCMRC 816.116(b)(1). We find that Arkansas' withdrawal of these proposed revisions is an adequate response to our concerns. Therefore, we are proceeding with this final rule **Federal Register** document.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

Any revisions that we do not discuss below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. ASCMRC 701.5 Definition of ''Renewable Resource Lands''

Arkansas corrected a typographical error by changing the words ''these charge'' to the words ''the recharge.'' With the correction of this error, Arkansas' definition is the same as the Federal definition of ''Renewal resource lands'' at 30 CFR 701.5.

2. ASCMRC 816.116(b)(1) Revegetation Success Standards for Areas Developed for Use as Pasture Land

Arkansas amended ASCMRC 816.116(b)(1) by replacing the general phrase ''such other success standards approved by the Department'' with a reference to its revegetation guidelines. ASCMRC 816.116(b)(1) now requires ground cover and production of living plants on areas developed for use as grazing and pasture land to be at least equal to that of a reference area or to comply with the criteria contained in Arkansas' ''Phase III Revegetation Success Standards for Pasture and Previously Mined Areas.''

The counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require ground cover and production of living plants on revegetated grazing land and pasture land areas to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. As discussed later in this document, Arkansas' revegetation success guidelines for pasture are consistent with the Federal regulations for revegetation of disturbed areas. Therefore, the revisions to ASCMRC 816.116(b)(1) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

3. ASCMRC 816.116(b)(2) Revegetation Success Standards for Areas Developed for Use as Cropland

Arkansas revised ASCMRC 816.116(b)(2) by replacing the reference to ''such other success standards approved by the Department'' with a reference to its revegetation guidelines. ASCMRC 816.116(b)(2) now requires crop production on areas developed for use as cropland to be at least equal to that of a reference area or to comply with the criteria contained in Arkansas' ''Phase III Revegetation Success Standards for Cropland.''

The Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) require crop production on revegetated cropland areas to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. As discussed later in this document, Arkansas' revegetation success guidelines for cropland are no less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we find that the revisions to ASCMRC 816.116(b)(2) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2).

4. ASCMRC 816.116(b)(3)(iv) Revegetation Success Standards for Areas to be Developed for Fish and Wildlife Habitat, Recreation, Shelter Belts, or Forest Products

Arkansas added a new paragraph (b)(3)(iv) that requires vegetation success for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products to comply with the criteria contained in its ''Phase III Revegetation Success Standards for Forest Products'' or its ''Phase III Revegetation Success Standards for Recreation and Wildlife Habitat.''

There is no direct Federal counterpart to this provision at 30 CFR 816.116(b)(3). However, the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in an approved program. As discussed later in this document, Arkansas' guidelines for revegetation success standards and sampling techniques for measuring success of forest products and of recreation and wildlife habitat are no less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we are approving the addition of ASCMRC 816.116(b)(3)(iv), which references these guidelines.

5. ASCMRC 816.116(b)(4) Revegetation Success Standards for Areas to be Developed for Industrial, Commercial, or Residential Use

Arkansas revised ASCMRC 816.116(b)(4) by requiring that vegetative ground cover comply with the criteria contained in its revegetation guidelines. ASCMRC 816.116(b)(4) now requires vegetative ground cover for areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed to not be less than that required to control erosion and to comply with the criteria contained in Arkansas' ''Phase III Revegetation Success Standards for Industrial, Commercial, and Residential Revegetation.''

The counterpart Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) require vegetative ground cover for areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed to not be less than that required to control erosion. As discussed later in this document, Arkansas' revegetation success guidelines for industrial, commercial, and residential areas are no

less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we find that the revisions to ASCMRC 816.116(b)(4) are no less effective than the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4).

6. ASCMRC 816.116(b)(5) Revegetation Success for Areas Previously Disturbed by Mining

Arkansas added a new provision at ASCMRC 816.116(b)(5) which requires vegetative ground cover for areas previously disturbed by mining that were not reclaimed to the requirements of Subchapter K and that are remined or otherwise redisturbed by surface coal mining operations to comply with the criteria contained in its Phase III Revegetation Success Standards for Pasture and Previously Mined Areas. This provision is in addition to the existing requirement that the vegetative ground cover must be no less than the ground cover existing before redisturbance and must be adequate to control erosion.

There are no direct Federal counterparts to this additional provision at 30 CFR 816.116(b)(5) and 817.116(b)(5), which also concern areas previously disturbed by mining. However, the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in an approved program. As discussed later in this document, Arkansas' guidelines for revegetation success standards and sampling techniques for measuring success of previously mined areas are no less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we are approving the addition of Arkansas' new provision at ASCMRC 816.116(b)(5).

7. Phase III Revegetation Success Standards for Pasture and Previously Mined Areas

Arkansas added policy guidelines in a guidance document entitled ''Phase III Revegetation Success Standards for Pasture and Previously Mined Areas.'' This guidance document describes the criteria and procedures for determining Phase III ground cover and production success for areas being restored to pasture under ASCMRC 816.116(b)(1) and for areas that were previously mined under ASCMRC 816.116(b)(5). It provides general revegetation requirements and success standards and measurement frequency for ground cover and forage production. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires revegetation success on pasture and previously mined land to be determined on the basis of the general revegetation requirements of the approved permit, ground cover, and production. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. Any previously mined land that was remined or redisturbed and reclaimed to a land use of pasture must achieve the same success standard for cover as land that was not previously disturbed by mining. However if the area is not reclaimed to the requirements of ASCMRC 816.111(b)(4), the vegetative cover must not be less than the ground cover existing before redisturbance and must be adequate to control erosion. The permittee must determine the ground cover standard and incorporate it into the permit prior to disturbance. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The permittee must measure the vegetation in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and production based on the regulatory requirements. The permittee must determine the forage production standard with a reference area or a current United States Department of Agriculture, Natural Resources Conservation Service (USDA/NRCS) high management target yield. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Forage production is to be measured utilizing sampling frames or whole area harvest. The guidance document also provides a method for establishing representative test plots. The permittee is to use a prescribed formula to determine sample adequacy. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps are to indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fourth year after completion of the last augmented seeding, the permittee must submit a mitigation plan to Arkansas. The mitigation plan must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line point transects; summary data forms for sampling frames; a T-table; data forms for forage crop production data harvested as baled hay; an example use of sample adequacy formula for ground cover measurements and hay production measurements; statistical analysis on sampling frame data and whole release area harvesting; yield adjustments for release areas due to differing soil series; and grasses of acceptable plant species for permanent ground cover on agricultural areas.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for pasture and previously mined areas. We find that Arkansas' policy guidelines for pasture land use areas and previously mined areas are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

8. Phase III Revegetation Success Standards for Cropland

Arkansas added policy guidelines in a guidance document entitled ''Phase III Revegetation Success Standards for Cropland.'' This guidance document describes the criteria and procedures for determining Phase III production success standards for areas being restored to cropland under ASCMRC 816.116 (b)(2). It provides success standards and measurement frequency for ground cover and crop production. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success on cropland be determined on the basis of ground cover and crop production. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. Measurements of the

vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and crop production based on the regulatory requirements of ASCMRC 816.111. The permittee is to determine the crop production standard in accordance with a reference area or a technical standard. Approved technical standards include the county average or target yield established by the USDA/NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. The permittee is to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Arkansas must approve any manual sampling of row crops. It is only allowed when weather or other factors prevent mechanical harvest. The guidance document also provides a method for establishing representative test plots for use with row crop production. The permittee is to use a prescribed formula to determine sample adequacy. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, the permittee must submit a mitigation plan to Arkansas. The permittee must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; summary data forms for sampling frames; data forms for crop production data; a T-table; an example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; a data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series and for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; and procedures for manually sampling row crops.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for cropland. We find that Arkansas' policy guidelines for cropland are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

9. Phase III Revegetation Success Standards for Forest Products

Arkansas added policy guidelines in a guidance document entitled ''Phase III Revegetation Success Standards for Forest Products.'' This guidance document describes the criteria and procedures for determining Phase III ground cover and tree and shrub stocking success for areas being restored to forest products under ASCMRC 816.116(b)(3). It provides general revegetation requirements and success standards and measurement frequency for ground cover and tree and shrub stocking rates. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success for forest products be determined on the basis of the general revegetation requirements of the approved permit, ground cover, and tree and shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. The permittee must measure the vegetation in accordance with the procedures outlined in the guidance document. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rates based on the regulatory requirements and consultation and approval of the Arkansas Forestry Commission on a permit specific basis. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method, and tree and shrub stocking is to be measured with sampling circles. The permittee must use a prescribed formula to determine sample adequacy. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, the permittee must submit a mitigation plan to Arkansas. The permittee must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line-point transect; data forms for sample circles; a T-table; examples of sample adequacy determinations for ground cover and tree and shrub stocking; statistical analysis for ground cover and tree and shrub stocking; and accepted plant species.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for forest products. We find that Arkansas' policy guidelines for forest products are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

10. Phase III Revegetation Success Standards for Recreation and Wildlife Habitat

Arkansas added policy guidelines in a guidance document entitled ''Phase III Revegetation Success Standards for Recreation and Wildlife Habitat.'' This guidance document describes the criteria and procedures for determining

Phase III success for areas being restored to recreation and wildlife habitat under ASCMRC 816.116(b)(3). It provides success standards and measurement frequency for ground cover and tree and shrub stocking. It also includes sampling procedures and techniques, data analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success on recreation areas and wildlife habitat be determined on the basis of the general revegetation requirements of the approved permit, ground cover, and tree and shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rates based on the regulatory requirements and consultation and approval of the Arkansas Game and Fish Commission on a permit specific basis. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method, and tree and shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, the permittee must submit a mitigation plan to Arkansas. The mitigation plan must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities then the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line-point transects; data forms for sample circles; a T-table; examples of sample adequacy determinations for ground cover and for tree and shrub stocking; statistical analysis for ground cover and tree and shrub stocking; and accepted plant species.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for recreation areas and wildlife habitat. We find that Arkansas' policy guidelines for recreation areas and wildlife habitat are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

11. Phase III Success Standards for Industrial/Commercial and Residential Revegetation

Arkansas added policy guidelines in a guidance document entitled ''Phase III Success Standards for Industrial/Commercial and Residential Revegetation.'' This guidance document describes the criteria and procedures for determining Phase III ground cover success for areas being restored to an industrial/commercial or residential land use under ASCMRC 816.116(b)(4). It provides general revegetation requirements and success standards and measurement frequency for ground cover. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success on industrial/commercial and residential land use areas be determined on the basis of the general revegetation requirements of the approved permit and ground cover density. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. The permittee must measure the vegetation in accordance with the procedures outlined in the guidance document. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Sample adequacy is to be determined using a prescribed formula. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success, a mitigation plan must be submitted to Arkansas. The permittee must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line-point transects; a T-table; an example of sample adequacy determination for ground cover; statistical analysis for ground cover; and accepted plant species.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for industrial/commercial and residential land uses. We find that Arkansas' policy guidelines for industrial/commercial and residential land uses are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

12. Prime Farmland and Grazing Land Revegetation Success Guidelines

Prime farmland and grazing land are also potential pre- and post-mining land uses in the State. In its letters dated August 27, 1998, and October 8, 1998, Arkansas indicated that prime farmland and grazing land guidelines will be submitted at a later date.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but we did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Arkansas program (Administrative Record No AR–562.01).

By letter dated September 28, 1998 (Administrative Record No. AR–562.07), the U.S. Army Corps of Engineers responded that its review found the amendment satisfactory.

Environmental Protection Agency (EPA)

The Federal regulation at 30 CFR 732.17(h)(11)(ii) requires us to get written consent from the EPA for those provisions of a program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Arkansas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request the EPA's consent.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AR–562.03). The EPA did not respond to our request.

State Historical 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 proposed amendments which may have an effect on historic properties. We requested the SHPO and ACHP to comment on Arkansas' amendment (Administrative Record No. AR–562.02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as submitted by Arkansas on August 27, 1998, and as revised on October 8, 1998.

We approve the revegetation guidelines that Arkansas proposed with the provision that they be fully placed in force in identical form to the guidelines submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 904, which codifies decisions concerning the Arkansas program. This final rule is effective immediately to expedite the State program amendment process and to encourage Arkansas to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and 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 published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on 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

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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 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 corresponding 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. Therefore, this rule will ensure that existing requirements previously published 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 corresponding Federal regulations.

Unfunded Mandates

OSM determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 904 is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

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

2. Section 904.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 904.15 Approval of Arkansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
August 27, 1998	November 25, 1998	ASCMRC 701.5; 816.116(b)(1), (2), (3)(iv), (4), (5); Policy Guidelines for Phase III Revegetation Success Standards for Pasture and Previously Mined Areas, Cropland, Forest Products, Recreation and Wildlife Habitat, Industrial/Commercial and Residential Revegetation.

[FR Doc. 98–31490 Filed 11–24–98; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–039–FOR]

Texas Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Texas abandoned mine land reclamation plan (from now on referred to as the ''Texas plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed additions, deletions, and revisions to its plan pertaining to Responsibilities; Definitions; Abandoned mine land reclamation fund; Eligible coal lands and water; Reclamation objectives and priorities; Reclamation project evaluations; Utilities and other facilities; Limited liability; Entry for studies or exploration; Contractor responsibility; Eligible noncoal lands and water; Reclamation priorities for noncoal program; Exclusion of certain noncoal reclamation sites; Land acquisition authority—noncoal; Lien requirements; Written consent for entry; Operations on private land; Entry and consent to reclaim; Appraisals; Liens; Satisfaction of liens; Entry for emergency reclamation; Land eligible for acquisition; Procedures for acquisition; Acceptance of gifts of land; Management of acquired land; and Disposition of reclaimed lands. Texas intended to revise its plan to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, E-mail: mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Texas Plan

On June 23, 1980, the Secretary of the Interior approved the Texas plan. You can find background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 23, 1980, **Federal Register** (45 FR 41937). You can also find later actions concerning the Texas plan and amendments at 30 CFR 943.25.

II. Submission of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TAML–61), Texas submitted a proposed amendment to its plan under the provisions of SMCRA. Texas submitted the amendment at its own initiative. We announced receipt of the amendment in the December 29, 1997, **Federal Register** (62 FR 67592). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the adequacy of the amendment. The public comment period closed on January 28, 1998.

During our review of the amendment, we identified concerns relating to the following sections: Eligible coal lands and water; Reclamation priorities for noncoal program; Land acquisition authority-noncoal; Lien requirements; Satisfaction of liens; Entry and consent to reclaim; Appraisals; Entry for emergency reclamation; Land eligible for acquisition; Disposition of reclaimed lands; Liens. We also identified editorial corrections in the two sections, Responsibilities and Definitions. We notified Texas of the concerns by facsimiles dated March 9, and August 25, 1998 (Administrative Record Nos. TAML–61.08 and TAML–61.10, respectively). Texas responded in letters dated July 20, and September 3, 1998, by submitting additional explanatory information and a revised amendment (Administrative Record Nos. TAML–61.09 and TAML–61.12, respectively).

Texas proposed additional revisions to the following sections: 12.803 Eligible coal lands and water; 12.809 Reclamation priorities for noncoal program; 12.811 Land acquisition authority-noncoal; 12.812 Lien requirements; 12.814 Entry and consent to reclaim; 12.815 Appraisals; 12.816 Liens; 12.817 Satisfaction of liens; 12.818 Entry for emergency reclamation; 12.819 Land eligible for acquisition; 12.820 Procedures for acquisition; 12.821 Acceptance of gifts of lands; 12.822 Management of acquired land; and 12.823 Disposition of reclaimed lands.

Based upon the additional explanatory information and revisions to the proposed plan amendment submitted by Texas, we reopened the public comment period in the October 2, 1998, **Federal Register** (63 FR 53003). The public comment period closed on October 19, 1998.

III. Director's Findings

Set forth below, under the provisions of SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are our findings concerning the proposed amendment. 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. Sections That Texas Deleted From Its Regulations

1. Section 12.805, Reclamation Project Evaluation

Texas proposed to delete this section. We are approving this deletion because we have no counterpart Federal regulation and the deletion will not make the Texas regulations inconsistent with the Federal regulations.

2. Section 12.814, Operations on Private Lands

Texas proposed to delete this section. We are approving this deletion because the provisions in this section are contained in new Sections 12.814, Entry and Consent to Reclaim and 12.815, Entry for Emergency Reclamation. Also, the deletion will not make the Texas regulations inconsistent with the Federal regulations.

B. Revisions to Texas' Plan That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State provisions and the Federal provisions are nonsubstantive.