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 has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 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 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 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 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 has 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 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

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

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
May 7, 1999	August 12, 1999	310 IAC 12–3–109(a) through (d); 12–3–114(b), (e), and (f); 12–3–115(b); 12–4–12(b)(4), (b)(6)(A)(ii), and (c); 12–4–16(a), (c), and (d); 12–6–2(a), (b), (c), and (e).

[FR Doc. 99–20839 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–041–FOR]

Texas Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns revegetation success and normal husbandry practice guidelines. Texas is adding these guidelines to ensure consistency with the corresponding Federal regulations; to ensure that adequate data collection methods are used for determining revegetation success for purposes of releasing reclamation performance bonds; and to ensure that the husbandry practices used by the permittee during the period of responsibility for revegetation success and bond liability are normal husbandry practices within the region for unmined lands.

EFFECTIVE DATE: August 12, 1999.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Texas 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 Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45

FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated May 13, 1999 (Administrative Record No. TX–649), Texas sent us an amendment to its program under SMCRA. Texas sent the amendment in response to our letters dated May 20, 1985, and February 21, 1990 (Administrative Record Nos. TX–358 and TX–476), that we sent to Texas under 30 CFR 732.17(c). The amendment includes a guideline document entitled ''Procedures and Standards for Determining Revegetation Success on Surface-Mined Land in Texas'' that permittees are to use for sampling and analysis of vegetation data. It also includes a guideline document entitled ''Normal Husbandry Practices for Surface-Mined Lands in Texas'' that permittees are to use for identifying agricultural and management practices that will not extend the period of responsibility for revegetation success and bond liability (extended responsibility period).

We announced receipt of the amendment in the June 1, 1999, **Federal Register** (64 FR 29249). 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 July 1, 1999. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified a concern with Texas' revegetation success guideline document relating to productivity of non-prime farmland soils. We were concerned that Texas' guidelines at Section V.B.2 were not clear on the requirement that in areas receiving 26 inches or less of precipitation, the production standards for cropland must be met in at least the last 2 consecutive years of the responsibility period. We notified Texas of this concern by telefax dated June 24, 1999 (Administrative Record No. TX–649.07). By letter dated June 30, 1999 (Administrative Record No. TX–649.09), Texas sent us revisions to Section V.B.2 and Appendix B that clarify its requirements for non-prime farmland cropland receiving 26 inches or less of precipitation.

Because the revisions merely clarified certain provisions of Texas' amendment, we did not reopen the public comment period.

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.

A. Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas

Texas submitted a guideline document that describes the procedures and standards for determining revegetation success on reclaimed surface mined lands in Texas. The Texas Coal Mining Regulations at 16 Texas Administrative Code (TAC) 12.395(a)(1) requires the Railroad Commission of Texas (Commission) to select standards for success and statistically valid sampling techniques for measuring success. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring success and include them in its approved regulatory program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking must be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) require that standards for success be applied in accordance with the approved postmining land use and specified minimum conditions for each type of land use. Texas developed its revegetation success guideline document to satisfy these requirements.

In some cases, the guidelines reference the performance standards for revegetation success contained in the Texas program at 16 TAC 12.390 through 12.395; but they do not replace or change any existing State regulations. As discussed in the findings below, we find that the revegetation success standards and statistically valid sampling techniques contained in Texas' revegetation success guideline document meet the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal requirements for revegetation success at 30 CFR 816.116 and 817.116.

1. *Section I. Introduction.* The introductory section provides the scope, purpose, and applicability of the revegetation success guideline document. Permittees must demonstrate revegetation success using the revegetation standards and statistically valid sampling techniques for measuring success contained in the guidance document. Use of the methods contained in this document will provide assurance that adequate data collection methods have been used for determining revegetation success for purposes of releasing reclamation performance bond funds. Permittees may propose alternative procedures for sampling and analysis of vegetation data. However, the Commission must approve the use of alternative methods, and the alternative methods must be included in the approved regulatory program.

We find that Section I is not inconsistent with the requirements of the Federal regulations at 30 CFR 816.116 and 817.116, and we are approving it.

2. *Section II. Regulatory Requirements.* This section references the regulatory requirements for meeting revegetation success under the Texas Surface Coal Mining and Reclamation Act at sections 134.041, .092(a)(19) and (20), and .104. It also references the implementing performance standards for revegetation success in the Texas Coal Mining Regulations at 16 TAC 12.390 through 12.395 and 12.399. Texas discusses the applicable sections of 16 TAC 12.390 and 12.395 that define the standards by which revegetation success will be measured; the general requirements that must be met for the vegetative cover; the requirements for the methodologies used for evaluating when the standards have been met; and the minimum standards for each postmining land use. Texas also discusses the definitions at 16 TAC 12.3 that are applicable to the guidance document, including ''disturbed area''; ''land use''; ''cropland''; ''pastureland''; ''grazingland''; ''forestry''; ''residential''; ''industrial/commercial''; ''recreation''; ''fish and wildlife habitat''; ''undeveloped land''; and ''reference area.''

We previously approved the regulations referenced and described in Section II, and we agree that they are applicable to the proposed revegetation success guideline document. Therefore, we find that including these regulations in this section of the document is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1).

3. *Section III. Vegetation Evaluation Procedures.* This section identifies specific concepts and requirements to be followed in developing revegetation evaluation plans.

Section III.A includes the general requirements for vegetation evaluation. Ground cover and productivity for herbaceous biomass measurements must be obtained during the growing season of the primary vegetation species comprising the land use. Herbaceous productivity is estimated from only the current season's growth. Woody-plant stocking can be measured at any time. Ground cover corresponds to the area of ground covered by the combined areal parts of standing permit-approved vegetation (dead or alive) and the litter that is produced naturally on site. The litter component cannot exceed 15 percent of the total ground cover. The species must be on either the planting list that contains approved species which support the land use or the list of approved desirable invader species. Both lists must be included in the approved permit. Rock fragments are considered ground surface cover during soil surveys, but only the vegetal component can be considered in ground cover measurements. Texas includes an example of hypothetical data from a vegetation survey and the resulting calculations from 100 observation points.

Section III.B covers the data collection characteristics of vegetation evaluation. The methods used for doing vegetation surveys must comply with statistical conventions. All methods used to assess revegetation success must contain the following criteria: (1) all sample points must be chosen independently and have an equal chance of being chosen; (2) the number of sample points should be independent of the size of the areas to be evaluated; and (3) sample units should include the same land use, similar vegetation growth forms, comparable management, and similar chemical and physical soil characteristics. The number of observation points needed to produce statistically-acceptable results depends on the vegetation parameter that is measured.

Section III.C identifies the requirements for reporting vegetation survey data. When submitting revegetation data, permittees are to include a map or aerial photograph that identifies the location of the vegetation survey transects. This subsection specifies what information must be reported for measurements of ground cover; productivity measurements for forages obtained from plot harvesting; productivity measurements for forages obtained by weighing a portion of the bales harvested; productivity measurements for cropland that involve plot harvesting; productivity measurements involving whole-field harvest; and stem count measurements for woody-plants. All measurements, except productivity measurements for cropland plot harvesting and whole-field harvest, must include a one-sided 90 percent confidence interval (with a 0.10 alpha error) if the cover, biomass, yield, or stem estimates are below the lowest acceptable value (90% of the technical standard) or where the reclaimed area is compared to a reference area. Productivity measurements for cropland that involve plot harvesting must include a one-sided 90 percent confidence interval (with a 0.10 alpha error) for the standardized crop yield. All productivity measurements must include documentation from a calibrated scale. The permittee must document the scale manufacturer, model number, calibration date, date and time of productivity data collections, and individual performing the weighing.

We find that Section III meets the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) that statistically valid sampling techniques for measuring success be selected by the regulatory authority and included in an approved regulatory program. We also find that this section is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) that require sampling techniques for measuring success to use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

4. *Section IV. Revegetation Success Evaluation and Measurement Methods.* This section provides the approved methods for implementing the various evaluation methods for ground cover, productivity, and woody-plant stocking, including the proper selection of observation points. Measurement methods are presented for all vegetation parameters. Measurement results must be compared to either approved reference areas or technical success standards.

Section IV.A provides information and examples for two methods of selecting observation points for collecting vegetation data. The first method, random point sampling, involves the selection of random points within the area to be evaluated and plotting the points on a map or aerial photograph. The second method, baseline sampling with multiple random starts, involves the random placement of a baseline within the target evaluation area, along with five randomly-placed transverse transects along the baseline. Either observation location method is appropriate for all revegetation performance parameters. Ground cover measurements should ideally involve 100 observation points, with a minimum of 75 points. Herbaceous productivity and wood plant stocking estimates require at least 15 measurements. The maximum sample number for ground cover and productivity/stem count distributions is 150 and 30, respectively. Permittees must use the statistical equations for binomially-distributed revegetation data in Appendix A to estimate a statistical adequate sample size for ground cover. They must use the statistical equations for normally-distributed revegetation data in Appendix A to estimate a statistically adequate sample size for productivity and woody-plant stocking.

Section IV.B provides guidance on adjusting for field conditions when conducting vegetation surveys. Non-vegetated structures such as permanent roads and ponds, riprap areas, and rock and brush piles created for wildlife are not to be included as part of the revegetation analyses. Habitat features in grazingland and pastureland must be included in ground cover and productivity measurements. Slopes under 25 percent should not influence on-the-ground measurement intervals. Individual areas to be surveyed must be under the same land use and management and must contain the same vegetation type.

Section IV.C provides guidelines for ground cover measurements. Ground cover measurements are required for all land uses, except for cropland after row crops have been planted. The point intercept method is the recommended method for determining ground cover. This section discusses the use of the point intercept method with a crosswire sighting device.

Section IV.D contains guidance for measurement of productivity. The method of measurement of productivity is dependent on the land use and the established vegetation. Productivity can be evaluated by hand-harvesting or with mechanized agricultural implements. Productivity measurements must be obtained during the growing season of the primary vegetation species. Either plot harvesting or whole-field harvesting are to be used for evaluation of herbaceous species and food or fiber crops. Herbaceous species should be harvested at the times appropriate to the plant species. Sampling should be timed to coincide with seed ripeness or the mature stage of the target vegetative

species. The moisture content of harvested herbaceous biomass and other vegetative/grain components must be standardized to eliminate weight variations due to moisture content. Moisture content must be determined using a properly calibrated, standard agricultural grain moisture tester. A determination that a statistically adequate sample size was obtained is performed on standardized or corrected dry weights. This section contains the formula for correcting the measured grain/bean weights to appropriate moisture contents. For whole-field harvesting, the total production from a hayed or harvested area is obtained by weighing the entire yields of the agricultural commodity. The permittee must notify the Commission 15 to 30 days before the harvest. The Commission may require that an inspector be on site during the harvest activity. Forage crops must be harvested following sound agronomic practices, including field-drying cut forage and not bailing until the forage moisture content is 25 percent or less. Moisture content for grains/beans must be adjusted to the accepted values for each agricultural commodity. The foreign material content of the grain/beans must be determined by a licensed grain dealer and the weight shrunk to marketable condition weight with a foreign material allowance of one percent. There is no allowances for harvest and handling losses. The harvesting of plots instead of the whole area is an acceptable alternative, as long as the yields of the plots are representative of the overall production. Appropriate sampling procedures for plots are included in this section. Sampling procedures include information to collect; plot size; harvest procedures; sample number; determination of moisture content; and a double-sampling method. This section also describes the grazing method to estimate productivity. The conversion of animal units (AU) to a weight of vegetation biomass for a given area can be used to estimate productivity in grazingland and pasture land uses instead of whole-field or plot harvesting. The animal numbers must be maintained in a manner that allows grazing of the current year's forage production without damaging future forage growth and quality. Included in this section is a table showing the minimum plant residue levels and stubble heights to sustain production and a table that contains a guide to animal-unit equivalents. Stocking rates must be verified by a signed affidavit from the party managing the grazing of a given area and must identify the time period covered and the class of livestock involved.

Section IV.E provides guidelines for woody plant stocking. Randomly-selected measurement locations are required for conducting woody plant stocking evaluations. Observation points should not be located within 20 feet of the edge of the stocked area. Observation points for woody plant counts can also be used for measuring ground cover. Woody plants counted for success determination must be alive and healthy and in place for two growing seasons. Miniplots, usually circular in shape, are used to determine stocking rates. The number of plots needed to characterize the evaluation area will depend on the variability of the vegetation. Approximately 30 plots should be randomly-placed, regardless of the size of the area to be evaluated. The number of samples required is calculated following procedures listed in Appendix A. The permittee must continue the sampling procedure until the actual number of measurements produces a statistically adequate sample size.

Section IV.F contains guidance on selecting and management of reference areas. The permittee must work closely with the Commission staff to select and develop a suitable reference area. Reference areas are unmined land units that are maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by agricultural production methods approved by the Commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area. This section contains criteria for comparing revegetated mined areas and reference areas. Although it is not essential that the reference area be immediately adjacent to the mined, revegetated area, the two areas should be close enough to each other to prevent differences in rainfall distribution patterns.

We find that the requirements of Section IV meet the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) that statistically valid sampling techniques for measuring success be selected by the regulatory authority and included in an approved regulatory program. We also find that this section is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) that require sampling techniques for measuring success to use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

5. *Section V. Revegetation Success Standards.* This section lists the revegetation success standards for each land use type and provides information on determining productivity of the reclaimed areas. Nine general types of land use are included: grazingland; pastureland; cropland; forestry; fish and wildlife habitat; undeveloped land; industrial/commercial; residential; and recreation. We find that Texas' revegetation success guidelines for each land use type in combination with its previously approved regulations at 16 TAC 12.395 meet the Federal requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1) that success standards be selected by the regulatory authority and included in its approved regulatory program. We also find that Texas' success standards for each land use type are no less effective than the Federal regulations at 30 CFR 816.116(b) and 817.116(b) that require standards for success be applied in accordance with the approved postmining land use.

a. Section V.A provides guidelines relating to ground cover and productivity standards for grazingland and pastureland. The ground cover values and productivity of mined, revegetated areas are compared either to the ground cover or productivity of an approved reference area or to approved technical standards. The revegetation success standard when reference areas are used is that the ground cover and the productivity of the revegetated grazingland or pastureland must be 90 percent of the reference area with a 90 percent statistical confidence.

The approved technical standards for ground cover on grazingland and pastureland are dependent upon the moisture regime (5- or 10-year extended responsibility period area) and the dominant plant species. For areas with an average annual precipitation greater than 26 inches, the ground cover standard is 95 percent for sod-forming grasses and 90 percent for bunch grass mixtures. For areas with an average annual precipitation less than or equal to 26 inches, the ground cover standard is 90 percent for sod-forming grasses and 80 percent for bunch grass mixtures. Seventy-five percent of the ground cover must be permit-approved species which support the land use. The remaining 25 percent can be permit-approved, desirable invader species.

Whole-field harvesting is appropriate for grazingland or pastureland harvested for hay. The harvest of plots is appropriate for all grazingland and pastureland. When reference areas are used, the permittee must compare the productivity of the reference area to the reclamation area. The lowest acceptable

value for the productivity of the reference area is 90 percent of the reference area productivity value. The actual yield for the reclaimed area must be used when comparing the data. Site-specific technical standards for grazingland and pastureland production are currently developed by the USDA-NRCS and are included in the permit application for each mine. These standards are site-specific with respect to rainfall, species/cultivar produced, soil mapping unit, and fertilization. The permittee must compare the productivity of the reclaimed area, with a 90 percent confidence interval, to the appropriate technical standard.

The Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require that ground cover and production of living plants on the revegetated grazingland or pastureland areas be at least equal to that of a reference area or such other success standards approved by the regulatory authority. We find that Texas' success standards for grazingland and pastureland are no less effective than these Federal requirements.

b. Section V.B contains guidance on the ground cover and productivity standards for cropland with non-prime farmland soils and cropland with prime farmland soils. Adequate ground cover to control erosion is required until crop production begins for both soil types.

(1) The productivity of mined, revegetated areas where non-prime farmland soils were involved is compared either to the productivity of an approved reference area or to approved technical standards. For non-prime farmland soils, the permittee must determine the lowest acceptable value for the productivity of the reference area by calculating 90 percent of the yield obtained form the reference area. The permittee must then compare the actual yield for the reclaimed area productivity to the lowest acceptable value for the reference area. For non-prime farmland soils, technical success standards must be determined by the USDA–NRCS at the request of the mine operator or landowner. The technical standards will be permit-specific and will be developed by using data on the expected individual crop productivity for the particular county and soil mapping unit, as published in the USDA–NRCS Field Office Technical Guides. For bond release in areas receiving more than 26 inches of precipitation (5-year responsibility period), the total field harvest of the crop for any two years, except the first year, will be compared to the approved productivity standard specifically developed for the particular crop and a particular growing season. In areas receiving 26 inches of precipitation or less (10-year responsibility period), the production standards must be met in at least the last 2 consecutive years of the responsibility period. The permittee must compare the productivity of the reclaimed area to 90 percent of the appropriate technical standards.

We find that Texas' success standards for non-prime farmland cropland are no less effective than the Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) that require crop production on the revegetated area to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. We also find that Texas' success standards for non-prime farmland cropland for areas of more than 26 inches of annual average precipitation are no less effective than the Federal regulations at 30 CFR 816.116(c)(2)(i) and 817.116(c)(2)(i) that require cropland to equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. Lastly, we find that Texas' success standards for non-prime farmland cropland in areas receiving 26 inches of precipitation or less are no less effective than the Federal regulations at 30 CFR 816.116(c)(3)(i) and 817.116(c)(3)(i) that require cropland to equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(2) Prime farmland productivity will be restored in accordance with provisions specified in 16 TAC 12.625 (Prime Farmland: Revegetation and Restoration of Soil Productivity). Productivity of restored prime farmlands will be returned to equivalent levels of crop yields as non-mined land of the same soil type in the surrounding area under equivalent levels of crop yields as non-mined land of the same soil type in the surrounding area under equivalent management practices. Measurement of crop productivity will be initiated within 10 years after completion of soil replacement. The measurement period for determining average annual crop production shall be a minimum of three crop years prior to bond release. For areas receiving more than 26 inches of precipitation, crop production may be measured in any of the extended responsibility period years except the first. For areas receiving 26 inches of precipitation or less, the crop production standards must be met in at least the last two consecutive years of the extended responsibility period. The reference crops on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Only two of the three required crop years may involve forage crops. Where row crops are the dominant crop grown on prime farmland in the area, the row crop requiring the greatest rooting depth must be chosen as one of the reference crops. Permittees must select reference crops through consultation with the USDA–NRCS. Reference areas are not applicable where restored prime farmland soils are involved. Productivity of crops grown on reclaimed prime farmland soils will be measured by using the crop yield of a reference crop produced on all or a portion of the reclaimed area. Crop yields will be determined through whole-field or plot harvesting. The reference crop yields for a given crop season will be compared to average yields for specific prime farmland soil series. These average yields are obtained from the USDA–NRCS National Soil Information System database, which contains information linking soil series and slope phase, land capability, and crop yields. Restoration of soil productivity will be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for non-mined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

By letter dated April 13, 1999, the USDA–NRCS State Conservationist in Texas concurred with the guidelines contained in Section V.B.4 concerning evaluation of productivity for restored prime farmland soils (Administrative Record No. TX–649).

Based on the USDA–NRCS concurrence and our own technical evaluation, we find the Texas' guidelines for restoration of prime farmland cropland are consistent with and no less effective than the Federal regulation requirements at 30 CFR 823.15 pertaining to revegetation and restoration of prime farmland soil productivity. We also find that Texas' success standards for prime farmland cropland for areas of more than 26 inches of annual average precipitation are no less effective than the Federal requirements at 30 CFR 816.116(c)(2)(i) and 817.116(c)(2)(i) that require cropland to equal or exceed the approved success standard during the growing season of any of the years of the responsibility period, except the first year. We find further that Texas' success standards for prime farmland cropland for areas of 26 inches or less of annual average precipitation are consistent with the Federal regulations at 30 CFR

816.116(c)(3)(i) and 817.116(c)(3)(i) that require cropland to equal or exceed the approved success standard during the growing seam of at least the last two consecutive years of the responsibility period.

c. Section V.C provides guidelines on the ground cover standards and woody-plant stocking rates for the forestry land use category. The forestry land use category is land used or managed for the long-term production of wood, wood fiber, or wood-derived products. Ground cover of mined, revegetated forestry areas are compared either to the ground cover of an approved reference area or to approved technical standards.

The ground cover of the reclaimed forest must be within 90 percent of the ground cover of the reference area, with a 90 percent statistical confidence. Only permit-approved permanent species and additional species found in the reference area will count toward the ground cover. The permittee must measure and record the ground cover value for the reference area and the reclaimed area. The permittee must then compare the reclaimed area ground cover estimate to 90 percent of the reference area cover value. If technical standards are used, they must be equal to or greater than 78 percent ground cover. The permittee must compare the reclaimed area ground cover estimate to 90 percent of the ground cover standard. Ground cover measurements must be evaluated in conjunction with information on the species composition. Seventy-five percent of the ground cover must be comprised of permit-approved species which support the land use and the remaining 25 percent can be comprised of desirable invader species. Lists of both types of species must be included in the approved reclamation plan.

The success of woody-plant stocking is determined by comparing the reclaimed forest area to a technical standard. The stocking rate success standards for woody plant species will be permit-specific and site-specific. Success standards for stocking rates will be developed by the applicant through consultation with the Texas Forest Service in accordance with guidelines included in attachment 3 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Forest Service. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stocking measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' guidelines for forestry are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Federal regulations require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of forestry. Consultation and approval may occur on either a programwide or a permit-specific basis. As noted above, Texas is requiring consultation and approval on a permit-specific basis.

d. Section V.D contains guidance on ground cover standards and woody-plant rates for fish and wildlife habitat. Fish and wildlife habitat is land that is dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

The ground cover values of mined, revegetated areas are compared to an approved technical standard. The ground cover of the reclaimed fish and wildlife habitat must be within 90 percent of a 78 percent ground cover success standard with a 90 percent statistical confidence. Ground cover measurements must be evaluated in conjunction with information on the species composition of the stands. Seventy-five percent of the ground cover must include permit-approved species which support the land use. Twenty-five percent can be comprised of desirable invader species as established and approved in the permit.

The success of woody-plant stocking is measured by comparing the reclaimed habitat to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates must be developed by the applicant through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. Permittees must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stocking measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' guidelines for fish and wildlife habitat are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Federal regulations require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis. As noted above, Texas is requiring consultation and approval on a permit-specific basis.

e. Section V.E provides guidelines on ground cover standards and woody-plant stocking rates for undeveloped land. Undeveloped land (no current use or land management) is land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

The ground cover values of mined, revegetated areas are compared to approved technical standards. The choice of technical standards to employ depends on the dominant vegetation growth form found in the undeveloped land: grasses or woody species. If grasses are predominant and the areas have an average annual precipitation greater than 26 inches, the ground cover standard is 95 percent for sod-forming grasses and 90 percent for bunch grass mixtures. If grasses are predominant and the areas have an average annual precipitation less than or equal to 26 inches, the ground cover standard is 90 percent for sod-forming grasses and 80 percent for bunch grass mixtures. If woody species are predominant, the technical standard for ground cover is 78 percent. The permittee must compare the ground cover estimate to 90 percent of the appropriate ground cover standard. Ground cover measurements must be evaluated in conjunction with information on the species composition of the stands.

Woody-plant stocking is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species are permit-specific and site-specific. The permittee must develop stocking rates through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stem count measurements

must be evaluated in conjunction with information on the species composition of the stands.

The Federal regulations at 30 CFR 816.116(b) and 817.116(b) do not contain specific reclamation success standards for undeveloped land. However, we find that Texas' guidelines for undeveloped land are not inconsistent with the requirements of the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

f. Section V.F contains guidelines relating to ground cover standards and woody-plant stocking rates for industrial/commercial land uses. These land uses involve either (1) extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products or (2) retail or trade of goods or services.

Ground cover must be adequate to control erosion. Woody-plant stocking, if it is implemented, is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates must be developed by the applicant through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' revegetation success guidelines. Woody-Plant stocking success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. Permittees must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stem count measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' ground cover guidelines are no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(4) and 817.116(b)(4) for areas to be developed for industrial, commercial, or residential use. The Federal regulations do not contain a woody-plant stocking standard for these land uses. However, we find that Texas' woody-plant stocking guidelines are consistent with the minimum stocking and planting arrangement requirements of the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

g. Section V.G provides guidance on ground cover standards and woody-plant stocking rates for a residential land use. This land use includes single- and multiple-family housing, mobile home parks, and other residential lodgings. Ground cover must be adequate to control erosion. Woody-plant stocking, if used, is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates will be developed by the applicant through consultation with the Texas Parks and Wildlife Department, in accordance with guidelines included in attachment 2 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stem count measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' ground cover guidelines for residential land use are no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(4) and 817.116(b)(4) for areas to be developed for industrial, commercial, or residential use. The Federal regulations do not contain a woody-plant stocking standard for this land use. However, we find that Texas' woody-plant stocking guidelines are consistent with the minimum stocking and planting arrangement requirements of the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

h. Section V.H contains guidelines on ground cover standards and woody-plant stocking rates for recreation land uses. This land use involves public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas. It may also include less intensive uses such as hiking, canoeing, and other undeveloped recreational uses. Ground cover must be sufficient to control erosion. Woody-plant stocking is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates will be developed by the applicant through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. The permittee must evaluate woody-plant stem count measurements in conjunction with information on the species composition of the stands.

We find that Texas' guidelines for recreation land use are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Federal regulations require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis. As noted above, Texas is requiring consultation and approval on a permit-specific basis.

6. *Section VI. Literature Cited.* This section provides a listing of the literature used in developing the guideline document. We find that this section is not inconsistent with the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

7. *Appendices and Attachments.* Texas included the following appendices and attachments in its revegetation success guideline document.

a. Appendix A contains the statistical information, including equations and tables, to be used in the determination of revegetation success for ground cover, productivity, and woody-plant stocking. We conducted a technical review of the statistical operations contained in appendix A, and we found that they meet the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) that statistically valid sampling techniques for measuring success be selected by the regulatory authority and included in an approved regulatory program.

b. Appendix B provides a table summarizing the revegetation success standards for all land uses. The table in Appendix B includes the revegetation parameters, performance standards, and conditions for bond release relating to each land use. We find that the addition of this summary is not inconsistent with the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

c. Appendix C contains examples of revegetation success determinations for ground cover and productivity involving herbaceous biomass and woody plant stem counts. The addition

of examples will aid the permittees in making revegetation success determinations when using the statistical sampling techniques in Texas' revegetation success guideline document. Therefore, we find that appendix C is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1).

d. Attachment 1 is a document entitled ''The Development of the Forage Production Standards for Post Mine Soils'' by the United States Department of Agriculture—Natural Resources Conservation Service. It contains an example of the methodology used by the USDA–NRCS to develop site-specific productivity standards for mining companies in Texas to use in demonstrating grazingland and pastureland productivity success on reclaimed areas. We find that the addition of attachment 1 is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1).

e. Attachment 2 is a document entitled ''Texas Parks and Wildlife Department Recommendations for the Development of Success Standards for Woody-Plant Stocking Rates.'' Permit applicants must develop woody-plant stocking rates for various land uses through consultation with the Texas Parks and Wildlife Department in accordance with the guidelines included in this attachment. We find that the addition of attachment 2 is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1).

f. Attachment 3 is a document entitled ''Texas Forest Service Recommendations for Reforestation of Pine and Hardwoods in Texas.'' Permit applicants must develop woody-plant stocking rates for forestry land uses through consultation with the Texas Forest Service in accordance with the guidelines included in this attachment. We find that the addition of attachment 3 is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1).

B. Normal Husbandry Practices for Surface-Mined Lands in Texas

Texas submitted a guideline document that describes the husbandry practices that may be used by the permittee during the period of responsibility for revegetation success and bond liability without restarting the extended responsibility period. The Texas Coal Mining Regulations at 16 TAC 12.395(c)(4) allow the Commission to approve selective husbandry practices provided it obtains prior approval from OSM that the practices are normal husbandry practices. The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow each regulatory authority to approve selective husbandry practices as normal husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval for the practices from OSM in accordance with 30 CFR 732.17. These normal husbandry practices may be implemented without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control. It also includes any pruning, reseeding, and transplanting needed because of these practices. Texas developed a normal husbandry practices guideline document to implement these requirements.

As discussed in the findings below, we find that the normal husbandry practices contained in the guideline document satisfy the requirements of 30 CFR 816.116(c)(4) and 817.116(c)(4).

1. *Section I. Introduction.* The introductory section provides the scope, purpose, and applicability of the normal husbandry practices guideline document. The guideline document includes the normal husbandry practices that permittees must use for disease and pest control, application of fertilizers, application and incorporation of other soil amendments, and any other necessary soil vegetation management activities on surface-mined lands in Texas during the extended responsibility period. Husbandry practices not included in this document may be considered augmentative in nature and, if performed on land that is currently in the extended responsibility period, may restart that period. The decision whether a particular activity can be classified as a normal husbandry practice will depend both on the regulatory requirements of the Texas Coal Mining Regulations and the postmining land use.

We find that this introductory section is not inconsistent with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4), and we are approving it.

2. *Section II. Regulatory Requirements.*

a. This section references the regulatory requirements for meeting revegetation success under the Texas Surface Coal Mining and Reclamation Act at sections 134.041, .092(a)(19) and (20), and .104. It also references the implementing performance standards for revegetation success in the Texas Coal Mining Regulations at 16 TAC 12.390 through 12.395, and 12.399. Texas discusses the applicability of section of 16 TAC 12.395(c)(4), which recognizes that the Commission may determine that certain management practices will not extend the responsibility period for revegetation success and bond liability.

We previously approved the regulations referenced and described in this section, and we agree that they are applicable to the proposed normal husbandry practices guideline document. Therefore, we find that the reference to and discussion of these regulations in this section of the document is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

b. Texas noted that the Commission intends that the terms ''husbandry'' and ''augment'' both have their ordinary meanings as follows:

> Husbandry—the control or judicious use of resources: conservation; the cultivation or production of plants and animals: agriculture; the scientific control and management of a branch of farming and especially of domestic animals.
>
> Augment—to make (something well or adequately developed) greater, more numerous, larger, or intense.

We find that Texas' definitions for the terms ''husbandry'' and ''augment'' are not inconsistent with the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

3. *Section III. Conventions for Normal Husbandry Practices.* Texas lists the following three conventions regarding normal husbandry practices for surface-mined lands in Texas:

> (1.) Normal husbandry practices are region-specific and include activities performed by landowners managing lands not disturbed by mining activities. For example, limestone application and incorporation is not practiced anywhere in the South Texas Plains vegetational area; therefore, liming would not be a normal husbandry practice for mines situated in this region. Practices required to address problems that arise from mining-related activities are not considered normal husbandry practices.
>
> (2.) Normal husbandry practices are those activities that can expected to continue as part of the postmining land use.
>
> (3.) Discontinuance of the husbandry practices will not reduce the probability of revegetation success. For example, the discontinuance of maintenance fertilization

on grazingland would not result in loss of vegetative cover (it might lead to an alteration of the species composition, however).

We find that Texas' conventions for normal husbandry practices at Section III are consistent with the requirements of the Federal regulations at 30 CFR 816.116(c)(4) and 817.117(c)(4).

4. *Section IV. Normal Husbandry Practices, as Influenced by Land Uses.* In Section IV, Texas proposes normal husbandry practices for six vegetative community postmining land uses defined in the Texas program: grazingland; pastureland; cropland; forestry; fish and wildlife habitat; and undeveloped land. The normal husbandry practices listed for grazingland, pastureland, cropland, forestry, and fish and wildlife habitat are divided into three general categories: (1) general management of soil and vegetation; (2) addition of plant nutrients and other soil amendments; and (3) pest management. Documents defining the normal husbandry practices for each category are referenced. Texas submitted copies of these documents to support its proposed practices for disease and pest control; application of fertilizers; application and incorporation of other soil amendments; and other necessary soil vegetation management activities on surface-mined lands. Because the definition of undeveloped land excludes any type of management inputs during the extended responsibility period, Texas is only allowing limited erosion repair for this land use.

We determined that the documents submitted by Texas and referenced in Section IV represent normal husbandry practices in Texas, and we find that Section IV is no less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

5. *Section V. Repair of Damaged Reclaimed Areas and Removal of Structures.* In Section V, Texas provides guidelines for erosion repair, other damage repair, reseeding areas, overseeding, and restocking of woody species. Texas also included a provision for regrading and revegetation of areas where temporary structures have been removed. By letter dated May 4, 1999, the USDA–NRCS State Conservationist in Texas concurred with Texas' proposed guidelines for repair of damaged areas and removal of structures in Section V.

a. Because reclaimed sites may experience some type of damage to established vegetation at some point during the period of extended responsibility, Texas may consider repair of erosion or other types of damage as a normal husbandry practice, provided that the damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan. Examples of such damage includes small slips, channel erosion, and unauthorized access. The total acreage of repaired areas cannot exceed three contiguous acres or ten percent of the total land of the extended responsibility area. In cases of erosion, repairs may be considered nonaugmentative if rill and gully damage was caused by precipitation exceeding a 10-year/24-hour event or damage occurred before the first two years of a 5-year extended responsibility period or four years of a 10-year extended responsibility period. After the first two or four years, whichever is applicable, total acreage for erosion repair cannot exceed one contiguous acre or two percent of the total land of that extended responsibility area. Texas will require that areas undergoing damage repair be fully revegetated with permanent, permit-approved species for at least one year before final bond release and meet all vegetation cover and productivity success standards. Documents defining the normal husbandry practices relating to general management, addition of plant nutrients and other soil amendments, and pest management for erosion repair areas are referenced in this section. Texas submitted copies of these documents and the USDA–NRCS concurrence letter, discussed above, to support its proposed normal husbandry practice guidelines for repair of erosion or other types of damage.

We determined that the documents submitted by Texas and referenced in Section V represent normal husbandry practices in Texas for repair of erosion or other types of damage. We believe that by limiting the size of areas that may be repaired without restarting the extended responsibility period and by demonstrating that such practices are supported as normal husbandry practices, Texas has ensured that the probability of revegetation success will not be reduced. Therefore, we find that Texas' proposed guidelines for repair of erosion or other types of damage are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

b. Texas will determine whether or not regrading and revegetation of areas where temporary structures such as sediment ponds, roads, and small diversions have been removed are nonaugmentative on a case-by-case basis. Areas that may pose significant potential for reclamation problems will require a separate extended responsibility period. Texas will require that areas undergoing removal of structures be fully revegetated with permanent, permit-approved species for at least one year before final bond release and meet all vegetation cover and productivity success standards.

Texas' provision that areas will be fully revegetated for at least one year before final bond release and meet all vegetation cover and productivity success standards will ensure that the vegetation of these areas will be subject to Texas' counterparts to the Federal regulations at 30 CFR 816.116 and 817.116 relating to the attainment of revegetation success. It will also discourage the removal of ponds, roads, or diversions toward the end of the liability period for the surrounding area because these areas would not qualify for final bond release until vegetative cover is fully established and meets Texas' revegetation standards. Texas' reference to temporary roads in its policy is interpreted by OSM to mean those roads necessary for maintenance of sediment ponds, diversions, and reclamation areas. Ancillary roads used for maintenance do not include haul roads or other primary roads which should have been removed upon completion of mining. It is also noted that in its letter dated May 4, 1999, the USDA–NRCS State Conservationist concurred with Texas' guideline for removal of structures.

Although Texas' guideline is primarily concerned with defining normal husbandry practices, the term ''nonaugmentative'' is used with reference to the removal and reclamation of structures used in support of reclamation. Texas specifically states in its guideline that the removal and reseeding of the structures is not a normal husbandry practice. We agree that reclamation of these areas, while being nonaugmentative, is not a normal husbandry practice.

As outlined in the May 29, 1996, **Federal Register** (61 FR 26792), OSM has adopted the policy published for comment in the September 15, 1993, **Federal Register** (58 FR 48333). Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence ''after the last year of augmented seeding, fertilizing, irrigation, or other work'' needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the

permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until two years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039, September 26, 1983).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA because the lands involved are relatively small in size and either widely dispersed or narrowly linear in distribution and the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and explained in the preamble to that rule (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

Based on the above discussion, we find that Texas' guideline for regrading and revegetation of areas where temporary structures have been removed is consistent with and no less effective than the Federal regulations at 30 CFR 816.46(b)(5) and (6), 817.46(b)(5) and (6), 816.150(f)(6), 817.150(f)(6), and sections 515(b)(19) and (20) of SMCRA, as clarified by OSM in the September 15, 1993, **Federal Register** (58 FR 48333).

c. Overseeding of winter cover crops and/or summer annuals, into existing vegetation, is considered a normal husbandry practice. Texas will require reseeding activities to be included in the mining company's reclamation plan. Texas referenced documents defining the normal husbandry practices relating to general management, addition of plant nutrients and other soil amendments, and pest management for reseeded areas. Texas submitted copies of these documents to support reseeding areas. We determined that the documents submitted by Texas and referenced in Section V represent normal husbandry practices in Texas for overseeding of winter cover crops and/or summer annuals, into existing vegetation. Therefore, we find that Texas' proposed guidelines for overseeding are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

d. Restocking of woody species is allowed, as long as the time and quantity of restocking is in compliance with Texas' regulations at 16 TAC 12.395(b)(3)(B). These regulations require that trees and shrubs counted in determining the success of stocking be in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine the success of stocking must have been in place for 60 percent of the applicable minimum period of responsibility. Texas' requirements for tree and shrub stocking are consistent with the Federal requirements at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). We agree that restocking of woody species is allowed under both the State and Federal regulations, as long as the time and quantity of restocking is in compliance with the regulations. Therefore we are approving this guideline.

6. *Section VI. Non-Normal and Unacceptable Husbandry Practices or Augmentation.* In Section VI, Texas lists those activities that are considered unacceptable husbandry practices. The activities include: reseeding of areas devoid of vegetation due to acid mine soils; irrigation; supplemental watering of herbaceous vegetation and supplemental watering of large woody stock later than two years after planting; all application and incorporation of alkaline amendments, except for non-excessive application; and excessive application of plant nutrients. If any of the listed practices are performed, the extended responsibility period for the affected areas will restart. Texas does not consider practices required to address problems that arise from mining-related activities as normal husbandry practices. Texas will use information from field inspection reports and mine-soil chemical analysis data to evaluate unacceptable husbandry practices or augmentation. We agree that the activities listed in this section are not normal husbandry practices and that they should not be allowed without extending the period of responsibility for revegetation success and bond liability. Therefore, we find that Section VI is not inconsistent with the Federal regulations for normal husbandry practices at 30 CFR 816.116(c)(4) and 817.116(c)(4).

7. *Section VII. Literature Cited.* This section provides a listing of the literature used in developing the guideline document. We find that this section is not inconsistent with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(r).

IV. Summary and Disposition of Comments

Public Comments

On June 1, 1999, we asked for public comments on the amendment (64 FR 19249). By letter dated June 9, 1999, the Texas Utilities Company System (TXU) Business Services provided comments on behalf of TXU Mining Company (TX–649.05). The TXU Business Services commented that TXU supports the proposed amendment, and the proposed procedures and standards provide adequate guidelines for determining revegetation success for the release of reclamation performance bonds. The TXU Business Services also stated that the amendment provides a clear description of the normal husbandry practices that may be used by permittees during the period of extended responsibility for revegetation success and bond liability. As shown in the findings above, we agree with the comments provided by the TXU Business Services.

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 Texas program (Administrative Record No. TX–649.03). By letter dated June 3, 1999 (Administrative Record No. TX–469.04), the USDA–NRCS State Conservationist in Temple, Texas, asked us to note that the amendment contained two letters from his office concurring on specific sections of the documents. He stated

that the USDA–NRCS was an active participant in the development of the documents, and he noted that the USDA–NRCS has worked with both the Texas Railroad Commission and individual mining companies in the State on reconstruction and reclamation of surface mined land. As indicated by the USDA–NRCS, the amendment contains letters dated April 13, 1999, and May 4, 1999, in which the USDA–NRCS concurs with Section V.B.4 of Texas' revegetation success guideline document and Section V of Texas' normal husbandry practices guideline document, respectively. As discussed in Finding A.5.b.(2), the USDA–NRCS concurred with Texas' guidelines for evaluation of productivity for restored prime farmland soils, and as discussed in Findings B.5. and B.5.b, the USDA–NRCS concurred with Texas' guidelines for repair of damaged reclaimed areas and removal of structures.

By letter dated June 18, 1999, the U.S. Army Corps of Engineers (Corps) commented on Texas' amendment (Administrative Record No. TX–649.08). The Corps recommended that the proposed amendment specify all measures in the International System of Units (SI), in lieu of the inch-pound (IP) system. The Federal regulations at 30 CFR 816.116 and 817.116 do not require States to use the International System of Units in their guidelines for determining revegetation success or normal husbandry practices. Also, the standards and specifications for revegetation developed by the USDA–NRCS, the Texas Agricultural Extension Services, major universities, and other recognized sources use the inch-pound system. However, we will give a copy of the comments to Texas for its consideration when developing future amendments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the 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 provisions in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX–649.01). 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 amendments that may have an effect on historic properties. On May 21, 1999, we requested comments on Texas' amendment (Administrative Record No. TX–649.02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on May 13, 1999, and as revised on June 30, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943, which codify decisions concerning the Texas program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Texas 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 has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 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 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 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 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 has 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 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
May 13, 1999	August 12, 1999	Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas; Normal Husbandry Practices for Surface-Mined Lands in Texas.

[FR Doc. 99–20840 Filed 8–11–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 590

UNITA (Angola) Sanctions Regulations: Implementation of Executive Orders 13069 and 13098

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the UNITA (Angola) Sanctions Regulations to implement Executive Order 13069 of December 12, 1997, and Executive Order 13098 of August 18, 1998, prohibiting certain transactions with respect to the National Union for the Total Independence of Angola (''UNITA'') and to make other technical and conforming changes.

EFFECTIVE DATE: AUGUST 12, 1999.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief, Policy Planning and Program Management, tel.: 202/622–2500, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

On September 26, 1993, in view of United Nations Security Council Resolution No. 864 of September 15, 1993, President Clinton issued E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p.636, declaring a national emergency with respect to UNITA's actions in Angola and placing sanctions on UNITA. Executive Order 12865 prohibits the sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of arms, arms–related materiel of all types, petroleum, and petroleum products, regardless of their origin, to the territory of Angola, other than through designated points of entry, or to UNITA. Executive Order 12865 also prohibits any activity by U.S. persons or in the United States that promotes or is calculated to promote such prohibited sale or supply. On December 10, 1993, the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') implemented Executive Order 12865 by promulgating the UNITA (Angola) Sanctions Regulations, 31 CFR Part 590 (the ''Regulations'').

On December 12, 1997, President Clinton issued Executive Order 13069, 62 FR 65989, 3 CFR, 1997 Comp., p.232, placing additional sanctions on UNITA, taking into account the provisions of United Nations Security Council Resolutions 1127 of August 28, 1997, and 1130 of September 29, 1997. Effective 12:01 a.m. EST on December 15, 1997, Executive Order 13069 closes all UNITA offices in the United States and prohibits various aircraft–related transactions. Specifically, section 2(a) of Executive Order 13069 prohibits the sale, supply, or making available in any form by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of aircraft or aircraft components, regardless of their origin, to the territory of Angola, other than through designated points of entry, or to UNITA. Section 2(b) prohibits the insurance, engineering, or servicing of UNITA aircraft by United States persons or from the United States. Section 2(c) prohibits the granting of takeoff, landing, or overflight permission to any aircraft on flights or continuations of flights to or from the territory of Angola other than to or from designated places in Angola. Section 2(d) prohibits the provision of engineering and maintenance servicing, the certification of airworthiness, the payment of new insurance claims against existing insurance contracts, and the provision, renewal, or making available of direct insurance by a United States person or from the United States with respect to any aircraft registered in Angola, except designated aircraft, and with respect to any aircraft that have entered the territory of Angola other than through designated points of entry.

On August 18, 1998, President Clinton issued Executive Order 13098, 63 FR 44771, 3 CFR, 1998 Comp., p.206, placing further sanctions on UNITA, taking into account the provisions of United Nations Security Council Resolutions 1173 of June 12, 1998, and 1176 of June 24, 1998. These additional sanctions went into effect at 12:01 a.m. EDT on August 19, 1998. Section 1 of Executive Order 13098 blocks all property and interests in property of UNITA, designated senior UNITA officials, and designated adult members of their immediate families if the property or property interests are in the United States, hereafter come within the United States, or are or hereafter come within the possession or control of United States persons. Section 2 prohibits the importation into the United States of all diamonds exported from Angola that are not controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation (the ''GURN''). Section 2 also prohibits the