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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 916

[KS-022-FOR]

#### Kansas Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Kansas Department of Health and Environment, Surface Mining Section (Kansas) proposed to consolidate and revise its approved revegetation guidance document. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

**EFFECTIVE DATE:** February 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463-6460. Internet address: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Kansas Program
- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
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#### I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance

with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas program on January 21, 1981. You can find background information on the Kansas program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning Kansas' program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

#### II. Submission of the Proposed Amendment

By letter dated October 9, 2001 (Administrative Record No. KS-622), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to deficiencies that we identified in Kansas' revegetation guidance document in a previous final rule on August 19, 1992 (57 FR 37430). The amendment also included changes made at Kansas' own initiative. Kansas amended the Kansas revegetation guidance document entitled “Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success.”

We announced receipt of the amendment in the November 30, 2001, **Federal Register** (66 FR 59751). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 31, 2001. We received comments from one industry group and one Federal agency.

During our review of the amendment, we identified concerns at Part I, Section I.6.b, about other plant species (species not approved in the permit) that are allowed for determining the acceptable percentage of ground cover for various postmine land uses. The other plant species are listed in Appendix A of Kansas' revegetation success guidelines. We notified Kansas of this concern in a

telephone conference on November 6, 2001 (Administrative Record No. KS-622.1A).

By letter dated November 29, 2001 (Administrative Record No. KS-622.2), Kansas sent us a letter from the Natural Resources Conservation Service that stated it concurred with the use of the plant species listed in Appendix A for determining ground cover success. Appendix A lists the acceptable plant species by land use (including legume, grass, tree, shrub, and vine) that permittees may use to meet Kansas' productivity and ground cover success standards when reclaiming mined land.

Kansas also submitted revisions to its revegetation guidance document on January 8, 2002 (Administrative Record No. 622.7), in response to comments received from Triad Environmental Services and the Natural Resources Conservation Service. These revisions are discussed in section IV, “Summary and Disposition of Comments.”

Because the additional information and revisions merely clarified certain provisions of Kansas' amendment, we did not reopen the public comment period.

#### III. OSM's Findings

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

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 techniques for determining revegetation success and include them in its approved regulatory program. Kansas sent us its revised revegetation guidance document to satisfy this requirement. As required by the Federal regulations at 30 CFR 816.116(a)(2), 817.117(a)(2), and 823.15(b), Kansas prescribed success standards in its guidance document that include criteria representative of unmined lands in the area being reclaimed, using parameters of ground cover, production, or stocking relevant to the approved postmining land use. The standards, criteria, and parameters reflect the extent of cover, species composition, and soil stabilization requirements of the Federal regulations at 30 CFR 816.111 and 817.111. The

revised guidance document also specifies the procedures to be used for sampling, measuring, and analyzing vegetation parameters. Use of these procedures will ensure consistent, objective collection of vegetation data. Therefore, we are approving the revisions to Kansas' revegetation guidance document as described below.

#### A. Preface

The preface to Kansas' guidance document discusses the purpose of the document, the geographic region the document concentrates on, and the State regulations covered by the document. Kansas removed language from the preface that we did not approve in the August 19, 1992, final rule decision. This language appeared to exempt specific permits from certain requirements of Kansas' guidance document.

We find that with the removal of the disapproved language, the preface to Kansas' guidance document meets the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

#### B. Definitions

Kansas defined the following terms that are specific to the Kansas revegetation guidance document: Animal Unit Month (A.U.M.); Cropland; Desirable; Diverse; Effective; Forage; Global Positioning System (GPS); Historically Cropped; Kansas Department of Wildlife and Parks (KDWP); Kansas State University (KSU); Natural Resources Conservation Service (NRCS); Permanent; Previously Mined; Prime Farmland; Surface Mining Section (SMS); and Total Cover.

The Federal regulations do not contain all of the definitions proposed by Kansas. However, we find that Kansas' definitions for cropland, historically cropped, previously mined, and prime farmland are substantively the same as the counterpart Federal definitions at 30 CFR 701.5. We further find that the other definitions are not inconsistent with other Federal definitions or the requirements for revegetation success at 30 CFR 816.116(a)(2), 817.116(a)(2), 816.111, or 817.111.

#### C. Tables

Kansas added three new tables that contain a summary of the vegetation requirements that are detailed in the guidance document. Table 1 contains a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of pasture land and grazing land; wildlife habitat, recreation, shelter belts,

and forest products; and industrial, commercial, or residential land uses. Table 2 lists a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of prime farmland. Table 3 contains a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of cropland.

We find that these summary tables meet the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

#### D. Part I. Ground Cover Success

Kansas consolidated the substantive provisions of its approved ground cover success standards for all land uses in Part I. Section A provides the standard for ground cover on prime farmland, cropland, and pasture/grazing land. Section B discusses the standard for ground cover on previously mined areas. Section C provides the standard for ground cover on wildlife habitat, recreation, shelter belt, and forest product land use areas that have topsoil. Section D contains standards for ground cover on industrial, commercial, or residential land use areas that have topsoil. Sections E and F provide general information on pre-mining ground cover sampling criteria and techniques. Section G contains specific pre-mining ground cover sampling techniques. Section H provides specific post-mining ground cover sampling criteria. Finally, Section I covers specific post-mining ground cover sampling techniques.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover. Ground cover will 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 must 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) contain the minimum success standards for ground cover for each land use. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful

revegetation. We conducted a technical review of Part I and found that Kansas' guidelines for ground cover are no less effective than the requirements of these Federal regulations.

#### E. Part II. Forage Production Success Standard

Kansas revised and consolidated the substantive provisions of its approved forage production success standards for prime farmland, cropland, pasture land, and grazing land in Part II. Section A discusses the use of the United States Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS) soil survey database for determining productivity of cool season grass seed mixtures. This database lists crop yields by the soil mapping units contained in the published county soil surveys for Kansas. Section A also discusses the USDA-NRCS database in Technical Guide Notice KS-145. This database is used for determining productivity of native grass seed mixtures. Section B contains information on methods of calculation using the Animal Unit Month (A.U.M.) values listed in the USDA-NRCS soil surveys for Kansas. Kansas reevaluated the A.U.M. value used in its previous guidance document for forage production. The A.U.M. value is the monthly average pounds of forage needed to support each 1,000 pounds of cattle. Kansas changed this value from 900 pounds to 760 pounds of dry forage based upon a recommendation by the Natural Resources Conservation Service (Administrative Record No. KS-622.8). Section C provides productivity standards for prime farmland forage crops. Section D covers the productivity standards for cropland forage crops. Section E covers the productivity standard for previously mined lands reconstructed to pasture and grazing land. Section F contains information on the productivity standards for pasture and grazing land. Section G discusses the methods of data collection, including use of representative areas with test plots or whole field harvesting. Kansas added whole field harvesting to the methods of data collection for forage. Section H contains specific forage crop production sampling criteria. Finally, Section I covers specific forage crop production sampling techniques.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2),

817.116(a)(2), and 823.15(b) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Production for prime farmland must meet 100 percent of the success standard.

Production for cropland, pasture land, and grazing land will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must 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) contain the minimum success standards for cropland, pasture land, and grazing land and 30 CFR 823.15(b) contains the success standards for prime farmland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part II and found that Kansas' guidelines for forage production are no less effective than the requirements of these Federal regulations.

#### *F. Part III. Productivity Standards for Row Crops*

Kansas revised and consolidated the substantive provisions of its approved row crop production success standards for prime farmland and cropland in Part III. Kansas also added corn as an acceptable row crop under specified conditions. Section A discusses the acceptable row crops for revegetation productivity. Section B contains information on the method of row crop production success standard calculations. Section C provides row crop sampling criteria. Section D contains the following sampling methods for data collection involving representative areas: test plots, whole field sampling, and whole field harvesting. Section E provides productivity sampling criteria for prime farmland row crops. Section F discusses productivity sampling criteria for cropland row crops. Finally, Section G contains row crop sampling techniques involving test plots and whole field sampling for grain sorghum (milo), wheat, soybeans, and corn.

In response to deficiencies that we identified in the August 19, 1992, final decision on Kansas' current revegetation success guidelines, Kansas revised its row crop sampling techniques for grain sorghum and wheat. To address the deficiencies, Kansas added provisions that require operators to make determinations of statistical sample

adequacy based on sample weights corrected to a standard moisture content.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15(b) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Production for prime farmland must meet 100 percent of the success standard. Production for cropland will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must 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) contain the minimum success standards for cropland and 30 CFR 823.15(b) contains the success standards for prime farmland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part III and found that Kansas' guidelines for row crop production are no less effective than the requirements of these Federal regulations.

#### *G. Part IV. Productivity Success Standards for Trees and Shrubs*

Kansas consolidated its productivity success standards for trees and shrubs in Part IV. Section A discusses the general success standards for fish and wildlife habitat, recreation areas, forest products, and shelter belts. Section B contains the Phase II and Phase III productivity success standards for these land uses. Section C provides information on productivity sampling criteria. Section D contains stem density sampling techniques. Finally, Section E discusses previously mined areas that are reclaimed to fish and wildlife habitat, recreation, forest products, and shelter belts.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria

representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of stocking. Tree and shrub stocking will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must 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)(3) and 817.116(b)(3) contain the minimum success standards for tree and shrub stocking for areas to be developed for fish and wildlife habitat, recreation, forest products, and shelter belts. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part IV and found that Kansas' guidelines for tree and shrub stocking are no less effective than the requirements of these Federal regulations.

#### *H. Appendices*

Kansas' revised revegetation guidance document contains seven appendices that support the provisions in Parts I through IV.

##### 1. Appendix A, Plant Species List

Kansas revised its previously approved list of plant species. Appendix A lists the plant species that are unacceptable for all land uses with specified exceptions. It lists the acceptable tree species for fish and wildlife habitat, recreation areas, forest products, and shelter belts. It also lists the acceptable shrub and vine species for fish and wildlife habitat, recreation areas, and shelter belts. In addition, it lists the acceptable legume species based on land use for revegetation productivity and ground cover. Finally, it lists the acceptable grass species based on land use for revegetation productivity and ground cover. By letter dated November 29, 2001 (Administrative Record No. KS-622.2), Kansas sent us a letter from the Natural Resources Conservation Service that stated it concurred with the use of the plant species listed in Appendix A for determining revegetation productivity and ground cover success for the State of Kansas.

Based on our technical review and the concurrence letter from the Natural Resources Conservation Service, we are approving the revisions to Appendix A.

##### 2. Appendix B, Animal Unit Month-Methods of Production Success Standard Calculations

As discussed in finding E, Kansas revised its A.U.M. value for use in calculating forage production. Kansas defines the A.U.M. as the monthly average pounds of forage needed to support each 1,000 pounds of cattle. Kansas submitted calculations and documentation in Appendix B that support an A.U.M. equal to 760 pounds of forage. Appendix B contains tables showing two methods of calculating the success standard for grain sorghum,

wheat, and corn by soil type. The documentation also includes two methods of calculating forage production based on A.U.M. per soil type for cool season grass seed mixtures and warm season grass seed mixtures. In a letter dated May 11, 1993, the Natural Resources Conservation Service recommended that Kansas use an average of 25 pounds of forage per day for a 1000 pound cow in calculating production requirements for forage. Kansas provided calculations to show that the monthly A.U.M. value would equal 760 pounds of forage.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must 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 will 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 must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Based on our technical review and the recommendation from the Natural Resources Conservation Service, we find that Appendix B in combination with Part II, Section B, meets the requirements of 30 CFR 816.116(a)(2) and 817.116(a)(2).

3. Appendix C (Production Data), Appendix D (Planting Reports), Appendix E (Reference Area Criteria), and Appendix G (Measuring Grain Moisture)

Kansas either proposed no revisions or nonsubstantive revisions to the previously approved information contained in Appendices C, D, E, and G. Therefore, we find that the information in these appendices continue to meet the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1).

4. Appendix F, Representative Sample Field Area Definition and Test Plot Criteria

Kansas allows permittees to use representative areas with test plots to assess row crop productivity. Kansas consolidated its criteria for representative sample field areas for cropland and prime farmland into Appendix F. Appendix F discusses the use of data from representative sample field areas to prove row crop production success. This data is obtained from individual row crop test plots. Kansas removed the requirement to describe the bulk density of each soil probe location. Kansas also removed the requirement for a secondary grouping of the field data.

We find that the removal of these requirements will not make Kansas' requirements for representative areas with test plots less effective than the Federal regulations at 30 CFR 816.116(a) and 817.116(a).

#### IV. Summary and Disposition of Comments

##### Public Comments

By letter dated December 31, 2001 (Administrative Record No. KS-622.6),

Triad Environmental Services (Triad) commented on several provisions in the amendment.

(1) Triad questioned why the minimum of 70 percent cover discussed in Part I, Section B, doesn't show up in Table 1 for "No Topsoil" areas.

Table 1 is just a summary of the vegetation requirements that are detailed in the guidance document. In the category of "No Topsoil" for each land use, Kansas summarizes the cover requirements as one year ground cover at 90 percent of the pre-mine cover and adequate to control erosion. Later in the document, Kansas provides the specific detailed guidance for measuring revegetation success by land use. In the detailed guidance Kansas specifies that a 70 percent ground cover is adequate to control erosion. There is no need to repeat all of the details provided in the land use specific guidance in the summary table.

(2) Triad commented that footnote (a) in Table 2 and footnote (b) in Table 3 should reference grain sorghum.

In response to Triad's comment, Kansas revised its terminology in Tables 2 and 3 to consistently refer to the row crop of grain sorghum.

(3) Triad questioned the meaning of the second paragraph in Part I that states "a subjective analysis of the ground cover will be required and must consider the premined quality of each land use." Triad also stated that the proposed revegetation guidelines should be for postmine revegetation success determinations.

In response to the first comment, Kansas revised the language in the second paragraph of Part I to read, "A detailed analysis of the premine ground cover will be required and must consider the premine quality of each land use."

Triad is incorrect in its assertion that the revegetation guidelines should be restricted to postmining revegetation. Measurement of postmining revegetation success is dependent upon a comparison to the premining vegetation as required at 30 CFR 816.116(a).

(4) Triad questioned why the premine ground cover was used in the second paragraph of Part I, Section A.

Kansas has chosen to use the premine reference area as one way of developing a standard of vegetative cover for comparison to the postmine cover. This is consistent with the Federal regulation requirements at 30 CFR 816.116(a)(2).

(5) Triad commented that Kansas should add the language "and shall be adequate to control erosion" in Part I, Section B.

In response to this comment, Kansas revised the second sentence in Part I, Section B, to read, "The ground cover success standards for previously mined areas will be the same as that of the premine ground cover, or at a minimum 70%, and shall be adequate to control erosion."

(6) Triad questioned whether in Part I, Section C, the word "and" should be replaced by the word "or" in the phrase, "will be the greater of the premine ground cover value and the ground cover value needed to meet the approved postmining land use." Triad also questioned whether the values in the Table 1 summary should be included in this section, i.e., "90% or greater of the 100% standard."

In response to Triad's first comment, Kansas added the word "either" after the words "greater of" and replaced the word "and" with the word "or." The revised sentence reads, "The ground cover success standards for fish and wildlife habitat, recreation, shelter belts and forest products land uses will be the greater of either the premine ground cover or the ground cover value need to meet the approved postmining land use."

In response to Triad's second comment, we do not believe that the exact language in Table 1 needs to be included in Section C. Table 1 is just a summary of the general vegetation requirements that are detailed in the guidance document. However, Kansas does state the same standard in the first sentence of Section C in the phrase, "all areas must meet 90% of the success standard." Unless otherwise stated, the success standard is always a "100% standard."

(7) Triad commented that the requirements in Part I, Section E, Premine Ground Cover Sampling Criteria Techniques, should be "clarified to state that if a lower technical standard is proposed then this procedure will be used. There is no requirement under 816.116 or 779.19 to collect premine vegetation at a 90 percent statistical confidence interval."

We disagree with the commenter. First, the Kansas regulations at K.A.R. 47-9-1(c) incorporate by reference 30 CFR Part 816. At 30 CFR 816.116(a)(1), all revegetation standards whether technical or reference area are required to be selected by the regulatory authority and included in an approved regulatory program. Any other standards

not included in the approved guidelines would have to be approved through the same regulatory selection and approval process as the existing approved guidelines. As such, the language suggested by the commenter would not meet the requirements of 30 CFR 816.116(a)(1). Second, 30 CFR 816.116(a)(2) does require the use of a 90 percent statistical confidence interval when the undisturbed premine ground cover data is used as a standard for comparison with postmining revegetation success data.

(8) Triad commented that in Part I, Section F.7, “the premine sample dates should agree with the postmine sample dates (i.e. December 1).”

In response to Triad’s comment, Kansas revised both the premine and postmine sample dates to read “April 1 to November 1.”

(9) Triad questioned why the species list for fish and wildlife habitat, recreation, shelter belts, and forest products, including pasture or grazing land used as wildlife habitat enhancement at Part I, Section I.9(a)(1), is different than the other land uses.

For these particular land uses, Kansas requires that a minimum of certain plant species be included in the ground cover on a land use specific basis. Kansas requires different species for different land uses because different land uses require the plant species that are compatible with that use.

(10) Triad commented that at Part II, Section F, Kansas needed to clarify the requirements for Phase II revegetation bond release.

In response to this comment, Kansas clarified the requirements for successful revegetation establishment at Phase II bond release by revising the first paragraph. Kansas added the language, “At Phase II” to the beginning of the last sentence of the paragraph as shown below:

At Phase II, successful revegetation establishment is attained when the revegetation success standards are achieved for one growing season in accordance with the requirements in K.A.R. 47–9–1(c), adopting by reference 30 CFR 816.111(a) and (b), and 816.116(b) and (c); and K.A.R. 47–9–1(e), adopting by reference 30 CFR 817.111(a) and (b), and 817.116(b) and (c).

(11) Triad questioned whether the stratification plan for forage crop production referred to in Part II, Section H, requires approval prior to initiation of sampling.

Kansas requires the operator to submit the plan for stratification before the initiation of sampling. However, Kansas does not require that the plan be approved before sampling. In the January 8, 2002, cover letter for its

revised guidance document, Kansas clarified that approval of the plan does not take place until after initial sampling (Administrative Record No. KS–622.7).

(12) Triad commented that Kansas should include the language, “meet or exceed the optional reference area” in Part III, Section E.

In response to Triad’s comment, Kansas added the suggested language to the last sentence of the first paragraph of Section E. The revised sentence reads as follows:

This required year of row crops must meet the calculated row crop success standard, or meet or exceed a reference area, to obtain a phase II bond release as per K.A.R. 47–8–9(a)(13), adopting by reference 30 CFR 800.40(c)(2).

(13) Triad commented that Bermuda grass should be added to Appendix A as an acceptable species for pasture land use. Triad also submitted a December 18, 2001, letter from Mr. Gary Kilgore, Area Crops Specialist for Kansas State University Extension Service, who recommended that Bermuda grass be allowed.

In response to this comment, Kansas revised Appendix A to include Bermuda grass on the list of approved species for pasture land use.

(14) Finally, Triad commented, “TRIBE 13—ANDROPOGONEAE—Little Bluestem, Big Bluestem, and Indian Grass should be allowed for pasture land use.”

In response to this comment, Kansas revised Appendix A to include these species on the list of approved species for pasture land use.

#### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kansas program (Administrative Record No. KS–622.1). The Natural Resources Conservation Service (NRCS) responded on December 10, 2001 (Administrative Record No. (KS–622.5), with two comments.

(1) The NRCS commented that in Part I, Section I.9, “the statement is made that a visual scan of each area will be made to determine compliance with diversity (number of species present). Instead of using a visual scan to determine species numbers, why not use the data developed from ground cover measurements to determine species numbers. This would provide more accurate information as well as reduce sampling time.”

In response to this comment, Kansas revised the text of Part I, Section I.9, to

require that data developed from ground cover measurements in addition to a visual scan during the optimal growing season will be used to determine if each stratified sample area meets the criteria specified for the intended land use.

(2) The NRCS provided the following comments concerning Part II, Section B:

The statement is made that Animal Unit Month (A.U.M.) Values listed in the USDA NRCS soil surveys are converted to lbs./acre of dry forage per growing season and that the guideline used is 760 lbs. of dry matter per A.U.M. A point of clarification is needed on this statement. The A.U.M. factors listed in soil surveys and technical notices are determined from the following procedure. The amount of total above ground forage production is multiplied by the harvest efficiency expected for that particular land use. This provides the amount of forage production allocated for animal consumption. This amount is then divided by the amount of forage allocated to an animal unit month (in this case, 760 lbs.). If the intent of the procedure covered under Section B is to arrive at a potential total production figure for the reclaimed land by multiplying the number of A.U.M.’s by 760, without taking into consideration the harvest efficiency factor, the potential productivity will be significantly underestimated.

Kansas did not make any changes in response to this comment. Kansas investigated the current USDA-NRCS soil surveys and discovered that the crop production values included compensation for loss due to livestock trampling, insect damage, and herbivore consumption (harvest efficiency factors).

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 Kansas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. KS–622.1). EPA did not respond to our request.

#### *State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 15, 2001, we

requested comments on Kansas' amendment (Administrative Record No. KS-622.1), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings, we approve the amendment Kansas sent us on October 9, 2001, and as revised on January 8, 2002.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 916, which codify decisions concerning the Kansas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the

roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

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

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a

significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

##### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

##### **List of Subjects in 30 CFR Part 916**

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 1, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR 916 is amended as set forth below:

##### **PART 916—KANSAS**

1. The authority citation for part 916 continues to read as follows:

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

2. Section 916.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 916.15 Approval of Kansas regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
October 9, 2001	February 26, 2002.	Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success dated January 2002.

[FR Doc. 02-4515 Filed 2-25-02; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 918**

[LA-021-FOR]

**Louisiana Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM) are approving an amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Louisiana proposed revisions to and additions of regulations concerning valid existing rights. Louisiana revised its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** February 26, 2002.

**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@osmre.gov](mailto:mwolfrom@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Louisiana Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, " \* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \* ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the October 10, 1980, **Federal Register** (47 FR 23883). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.15 and 918.16.

**II. Submission of the Amendment**

By letter dated August 3, 2001 (Administrative Record No. LA-366.04), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana sent the amendment in response to an August 23, 2000, letter (Administrative Record No. LA-366) that we sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed to amend the Louisiana Surface Mining Regulations (LSMR).

We announced receipt of the proposed amendment in the September 20, 2001, **Federal Register** (66 FR 48393). In the same document, we opened the public comment period and provided an opportunity for a public

hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 22, 2001. We received comments from one Federal agency.

During our review of the amendment, we identified concerns about the definition of valid existing rights; areas where mining is prohibited or limited; exceptions for existing operations; procedures for permit application review; general requirements for development operations involving removal of more than 250 tons; valid existing rights determinations; criteria for permit approval or denial; and several cross-reference errors. We notified Louisiana of these concerns by letter dated November 16, 2001 (Administrative Record No. LA-366.08). By letter dated November 20, 2001 (Administrative Record No. LA-366.09), Louisiana sent us revisions to its proposed program amendment.

Based on Louisiana's revisions to its amendment, we reopened the public comment period in the December 26, 2001, **Federal Register** (66 FR 66377). The public comment period ended on January 10, 2002. We received comments from one Federal agency.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not discuss below concern nonsubstantive wording or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Louisiana's regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.