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December 2002	.0530	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 8th day of November 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[LA–022–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 its regulations concerning revegetation success standards for post-mining land uses of pastureland and wildlife habitat. Louisiana also proposed to add to its program a policy document that describes the criteria and procedures for determining reclamation phase III ground cover and tree and shrub stocking success for areas developed for wildlife habitat. Louisiana revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolf from, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolf from@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Louisiana Program
- II. Submission of the Amendment
- III. OSM's Findings
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- V. OSM's Decision
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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** (45 FR 67340). 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 October 2, 2001 (Administrative Record No. LA–367), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana sent the amendment in response to our letters dated March 24, 1999, and August 16, 2000 (Administrative Record Nos. LA–365 and LA–365.01, respectively), that we sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed revisions to the Louisiana Surface Mining Regulations found in the Louisiana Administrative Code, Title 43, Part XV (LAC) concerning revegetation success standards for post-mining land uses of pastureland and wildlife habitat. Louisiana also proposed to add to its program a policy document that describes the criteria and procedures for determining reclamation phase III ground cover and tree and shrub stocking success for areas developed for wildlife habitat.

We announced receipt of the proposed amendment in the November 2, 2001, **Federal Register** (66 FR 55609).

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 December 3, 2001. We received comments from two Federal agencies. One of these agencies, the U. S. Fish and Wildlife Service (FWS), offered several comments on the proposed amendment. We forwarded these comments to Louisiana on January 25, 2002 (Administrative Record No. LA–367.06). By telephone, the State informed us that it would have to study the comments before responding to them (Administrative Record No. LA–367.08). We received Louisiana's response to the FWS comments in a letter dated June 11, 2002 (Administrative Record No. LA–367.05). Louisiana stated that it felt that its proposed revegetation success standards are consistent with SMCRA and no less effective than the Federal surface mining regulations. Therefore, we are proceeding with the final rule **Federal Register** document.

III. OSM's Findings

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

A. Section 5423. Revegetation: Standards for Success

Louisiana added new paragraph B.1.e. stating that the criteria and procedures for determining ground cover and production success for pastureland are found at Section 5424. Louisiana also added new paragraph B.8.a. stating that the criteria and procedures for determining ground cover and stocking success for fish and wildlife habitat are found at Section 5425. There are no Federal counterpart regulations stating where to find in the regulations criteria and procedures for determining ground cover and production success for areas

developed for use as pastureland. Also, there are no Federal counterpart regulations stating where to find in the regulations criteria and procedures for determining ground cover and stocking success for areas developed for fish and wildlife habitat. We are approving the addition of these two new paragraphs because they merely direct readers to where they can find specific criteria and procedures for determining ground cover and production success for pastureland or ground cover and stocking success for fish and wildlife habitat.

B. Section 5424. Revegetation: Standards for Success—Post-Mining Land Use of Pastureland

1. Section 5424.A. Introduction

Louisiana proposed regulations that describe the criteria and procedures for determining ground cover and production success for areas being restored to pastureland. According to Section 5423, ground cover and production success on pastureland determinations must be based on the following criteria: (1) General revegetation requirements of the approved permit, (2) ground cover density, and (3) production. Also, the permittee is responsible for determining and measuring ground cover and production and for submitting this data to the Commissioner of Conservation (Commissioner) for evaluation.

The Federal regulation at 30 CFR 816.116(b) provides that the standards for revegetation success must be applied in accordance with the approved post-mining land use. It also provides that the ground cover and vegetation production parameters must be measured and compared to an appropriate revegetation standard in order to determine if the post-mining land use area has been successfully revegetated. We find that Louisiana's proposed regulation concerning the requirement to measure post-mining vegetation cover and production for the land use of pasture is no less effective than the Federal regulation at 30 CFR 816.116(b). Therefore, we are approving the proposed Louisiana regulation.

2. Section 5424.B. Success Standards and Measurement Frequency

a. Ground Cover and Forage Production. In paragraphs B.1. and B.2., Louisiana proposed regulations for ground cover and forage production, respectively. In paragraph B.1., Louisiana sets forth the criteria and procedures for determining ground cover and production success on pastureland. The criteria include an

acceptable ground cover that is at least 90 percent of the approved success standard at a 90-percent confidence interval. The success standard is 90 percent. The criteria also include how to measure the ground cover; what types of species mixtures are required; sampling techniques for measuring success; when and how often to sample; and the length of the responsibility period. In paragraph B.2., Louisiana sets forth the criteria and procedures for determining forage production success on pastureland. The criteria include the success standard for hay production; when and how often to sample; and the length of the responsibility period.

The Federal regulation at 30 CFR 816.116(a)(2) provides the requirements for establishing revegetation success standards for ground cover and forage production for pastureland and the sampling techniques for measuring success. The Federal regulation at 30 CFR 816.116(c)(2) provides the length of the responsibility period and the time frame for sampling. We find that Louisiana's proposed regulations meet the requirements of the Federal regulations at 30 CFR 816.116(a)(2) and (c)(2) and are no less effective. Therefore, we are approving them.

b. Reference Area Requirements. In paragraphs B.3., Louisiana proposed regulations for reference area requirements. Louisiana proposed that reference areas must be representative of soils, slope, aspect, and vegetation in the pre-mined permit area. However, in cases where differences exist because of mixing of several soil series on the reclaimed area or unavailability of a reference area, yields must be adjusted. Reference area pastureland must also be under the same management as pastureland in the reclaimed area and must consist of a single plot (whole plot) at least four acres in size. Forage yields for the reference plot must be at a level that is reasonably comparable to the parish average for a given crop. Reference areas may be located on undisturbed acreage within permitted areas. When release areas and reference plots fall on different soil series, adjustments must be made to compensate for the productivity difference.

The Federal regulation at 30 CFR 816.116(a)(2) requires standards for success to include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. At 30 CFR 816.116(b), the Federal regulation requires that standards for success must be applied in accordance with the approved post-mining land

use. Also, for areas developed for use as pastureland, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

Louisiana proposed regulations that provided details for using reference areas as a standard for comparison with areas reclaimed to pastureland. The use of reference areas is consistent with standard scientific studies that use reference areas for studying vegetation. We find that Louisiana's proposed regulations concerning the use of these reference areas are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

3. Section 5424.C. Sampling Procedures

a. Random Sampling and Sampling Techniques for Ground Cover. In paragraphs C.1. and C.2.a., Louisiana proposed regulations for random sampling procedures and ground cover sampling techniques to assure that the samples truly represent the vegetative characteristics of the whole release or reference area. The regulations require permittees to use methods that will provide the following: (1) A random selection of sampling sites, (2) a sampling technique unaffected by the sampler's preference, and (3) sufficient samples to represent the true mean of the vegetation characteristics. The regulations instruct the permittees on how to select sampling points. They also require permittees to notify regulatory personnel ten days before conducting sampling or other harvesting operations to allow them an opportunity to monitor the sampling procedures. In addition, the regulations list the three approved statistically valid sampling techniques for measuring ground cover on pastureland and provide instructions for using them. The approved sampling techniques are pin method, point frame method, and line intercept method.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for vegetation success and statistically valid sampling techniques for measuring vegetation success. Louisiana proposed regulations requiring a random sampling technique to ensure that sample selection used for measuring success is not biased and will result in a statistically valid sample of adequate size. Also, Louisiana proposed regulations that allow the use of three separate statistically valid sampling methods that can be used to measure ground cover on pastureland. The

proposed regulations are not inconsistent with and are no less effective than the Federal regulations and we are approving them.

b. *Sampling Techniques for Productivity.* In paragraph C.2.b., Louisiana proposed regulations for measuring vegetation productivity on pastureland. The proposed regulations set forth procedures for controlling two components (time of harvest and moisture content) that may potentially influence production yield. The proposed regulations also set forth the following two statistically valid sampling methods that can be used to evaluate production: (1) Sampling frames for harvesting plots, or (2) whole field or whole area harvesting.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana proposed procedures for controlling for two components that may influence vegetation production and set forth two statistically valid sampling methods that can be used to evaluate production. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

c. *Sample Adequacy.* In paragraph C.3., Louisiana proposed regulations for sampling adequacy. The proposed regulations set forth the procedure and formula to use for determining the actual number of samples needed to measure ground cover and productivity. The regulation requires the collection of data using a multi-staged sampling procedure. The proposed formula is a standard scientific formula for determining sample adequacy in order to ensure that vegetation sampling is statistically valid.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana's proposed regulations contain a procedure and a standard scientific formula to use for determining sample adequacy and to ensure that vegetation sampling is statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

4. Section 5424.D. Data Submission and Analysis

Louisiana proposed the following regulations: (1) When to submit data to the Commissioner for review, (2) what

is successful vegetation ground cover and production for the release area, (3) what to do when data indicates that average ground cover and average forage production for the release area is insufficient, and (4) making adjustments to forage production yields to account for moisture content before making statistical comparisons.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana is adopting requirements for data submission and analysis in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

5. Section 5424.E. Maps

Louisiana proposed regulations requiring permittees to submit maps with their requests for reclamation phase III bond release. The maps must show the location of the proposed release area, the location of the reference plots, and all permit boundaries. When permittees submit data from a previously approved reclamation plan, maps must accompany the data. The maps must show the location of reference plots and each sampling point, the area covered by the sampling, and all permit boundaries.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana is adopting requirements for submission of maps as part of the bond release application in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

6. Section 5424.F. Mitigation Plan

Louisiana proposed a set of criteria for developing a new phase III release plan in the event that the operator cannot demonstrate successful forage productivity and ground cover on the release area after the full five years of the phase III responsibility period.

The Federal regulations at 30 CFR 816.116(c)(1) and (c)(2) require that "the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding,

fertilizing, irrigation, or other work * * *." In areas where the annual average precipitation is more than 26.0 inches, the period of responsibility must continue at least five full years. Vegetative ground cover and production for pasture land must also equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. Louisiana is adopting requirements for the development of a mitigation plan in the event that the operator is not able to demonstrate revegetation success during the phase III responsibility period. The proposed regulations are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

C. Section 5425. Revegetation: Standards for Success—Post-Mining Land Use of Wildlife Habitat

1. Section 5425.A. Introduction

Louisiana proposed regulations that describe the criteria and procedures for determining ground cover and stocking success for areas being developed for wildlife habitat. According to Section 5423, ground cover and stocking success on wildlife habitat determinations must be based on the following criteria: (1) General revegetation requirements of the approved permit, (2) ground cover density, and (3) tree or shrub stocking and survival. Also, the permittee is responsible for determining and measuring ground cover and production and for submitting this data to the Commissioner for evaluation.

The Federal regulation at 30 CFR 816.116(b) provides that the standards for revegetation success must be applied in accordance with the approved post-mining land use. Also, for areas developed for wildlife habitat, the success of vegetation must be determined on the basis of tree and shrub stocking and vegetative ground cover. We find that Louisiana's proposed regulation concerning the requirement to measure post-mining vegetation cover and stocking for the land use of wildlife habitat is no less effective than the Federal regulation at 30 CFR 816.116(b). Therefore, we are approving the proposed Louisiana regulation.

2. Section 5425.B. Success Standards and Measurement Frequency

Ground Cover and Tree and Shrub Stocking Rate

In paragraphs B.1. and B.2., Louisiana proposed regulations for ground cover and tree and shrub stocking rate, respectively. In paragraph B.1.,

Louisiana sets forth the criteria and procedures for determining ground cover on wildlife habitat. The criteria include a ground cover of at least 70 percent density with a 90-percent statistical confidence interval for the last year of the 5-year responsibility period. The criteria also include how to measure the ground cover and what types of species mixture are required.

In paragraph B.2., Louisiana sets forth the criteria and procedures for determining tree and shrub stocking success on wildlife habitat. The criteria require that the State consult with and receive approval from the Louisiana Department of Wildlife and Fisheries, on a permit-specific basis, when determining the stocking rate for trees and shrubs. Also, the trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement must have utility for the approved post-mining land use. When these two aspects of the criteria are met and acceptable ground cover is achieved, the 5-year responsibility period begins. The success standard for tree and shrub stocking rate is equal to or greater than 90 percent of the stocking rate approved in the permit at a 90-percent statistical confidence interval. The criteria for the stocking rate also provides the following: (1) When and how often to sample, (2) what physical condition the trees and shrubs must be in to be counted, and (3) what percent of the trees and shrubs used to determine success must be in place and for how long.

The Federal regulation at 30 CFR 816.116(a)(2) provides that ground cover and stocking is considered equal to the approved success standard when they are not less than 90 percent of the success standard at a 90-percent statistical confidence interval. The Federal regulation at 30 CFR 816.116(b) requires that standards for success must be applied in accordance with the approved post-mining land use and, at a minimum, the success of vegetation must be determined on the basis of tree and shrub stocking and vegetative ground cover. The regulatory authority must specify the minimum stocking and planting arrangements on the basis of local and regional conditions. However, the regulatory authority must first consult with and receive approval from the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program-wide or a permit-specific basis. Trees and shrubs to be used in determining the success of stocking and the adequacy of the plant arrangement must have utility for the approved post-mining land use. Trees

and shrubs counted in determining such success must be healthy and have been in place for not less than 2 growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success must have been in place for 60 percent of the applicable minimum period of responsibility. The Federal regulation at 30 CFR 816.116(c)(2) requires the period of extended responsibility for successful revegetation to begin after the last year of augmented seeding, fertilizing, irrigation, or other work. In areas that receive more than 26.0 inches of annual average precipitation, the period of responsibility must continue for not less than 5 years. Areas approved for wildlife habitat must equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

In its amendment, Louisiana proposed the requirement for revegetation success standards, measurement techniques, local wildlife agency consultation and approval, and liability period requirements for wildlife habitat. We find that the State's proposed revisions are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

3. Section 5425.C. Sampling Procedures

a. *Random Sampling and Sampling Technique for Ground Cover.* In paragraphs C.1. and C.2.a., Louisiana proposed regulations for random sampling procedures and ground cover sampling techniques, respectively, to assure that the samples truly represent the vegetative characteristics of the whole release or reference area. The regulations require permittees to use methods that will provide the following: (1) A random selection of sampling sites, (2) a sampling technique unaffected by the sampler's preference, and (3) sufficient samples to represent the true mean of the vegetation characteristics. The regulations instruct the permittees on how to select sampling points. They also require permittees to notify regulatory personnel ten days before conducting sampling or other harvesting operations to allow them an opportunity to monitor the sampling procedures. In addition, the regulations list the three approved statistically valid sampling techniques for measuring ground cover on wildlife habitat and provide instructions for using them. The approved sampling techniques are pin method, point frame method, and line intercept method.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program, standards

for vegetation success and statistically valid sampling techniques for measuring vegetation success. Louisiana proposed regulations requiring a random sampling technique to ensure that sample selection used for measuring success is not biased and will result in a statistically valid sample of adequate size. Also, Louisiana proposed regulations that allow the use of three separate statistically valid sampling methods that can be used to measure ground cover on wildlife habitat. The proposed regulations are not inconsistent with and are no less effective than the Federal regulations and we are approving them.

b. *Sampling Technique for Sampling Circles.* In paragraph C.2.b., Louisiana proposed instructions on how to count trees and shrubs using sampling circles. Louisiana also provided criteria on which trees and shrubs to count. The tree or shrub to be counted must be healthy and must have been in place for at least two years. At the time of liability release, 80 percent of the trees and shrubs must have been in place for three years.

The Federal regulation at 30 CFR 816.116(a)(1) requires the regulatory authority to select the standards for success and the statistically valid sampling techniques for measuring success. The selected standards and sampling techniques must be included in the regulatory authority's approved regulatory program. Louisiana proposed the use of sampling circles as a statistically valid sampling method for measuring tree or shrub stocking on the wildlife habitat. The proposed regulation is not inconsistent with and is no less effective than the Federal regulation, therefore, we are approving it.

c. *Sample Adequacy.* In paragraph C.3., Louisiana proposed regulations for sampling adequacy. The proposed regulations set forth the procedure and formula to use for determining the actual number of samples needed to measure ground cover and productivity. The regulation requires the collection of data using a multi-staged sampling procedure. The proposed formula is a standard scientific formula for determining sample adequacy in order to ensure that vegetation sampling is statistically valid.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana's proposed regulations contain a procedure and a standard scientific formula to use for

determining sample adequacy and to ensure that vegetation sampling is statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

4. Section 5425.D. Data Submission and Analysis

Louisiana proposed the following regulations: (1) When to submit data to the Commissioner for review, (2) what is successful vegetation ground cover and stocking for the release area, and (3) what to do when data indicates that average ground cover and average tree and shrub stocking density for the release area is insufficient.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana proposed to adopt requirements for data submission and analysis in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

5. Section 5425.E. Maps

Louisiana proposed regulations requiring permittees to submit maps with their requests for reclamation phase III bond release. The maps must show the location of the proposed release area, the location of the reference plots, and all permit boundaries. When permittees submit data from a previously approved reclamation plan, maps must accompany the data. The maps must show the location of each transect and sampling circle location, the area covered by the sampling, and all permit boundaries.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana is adopting requirements for submission of maps as part of the bond release application in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

6. Section 5425.F. Mitigation Plan

Louisiana proposed a set of criteria for developing a new phase III release plan in the event that the operator cannot

demonstrate successful vegetation ground cover and tree and shrub stocking on the release area after the full five years of the phase III responsibility period.

The Federal regulations at 30 CFR 816.116(c)(1) and (c)(2) require that "the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work * * *." In areas where the annual average precipitation is more than 26.0 inches, the period of responsibility must continue for at least five full years. Vegetative ground cover for wildlife habitat must also equal or exceed the approved success standard during the growing season of the last year of the responsibility period. Louisiana is adopting requirements for the development of a mitigation plan in the event that the operator is not able to demonstrate revegetation success during the phase III responsibility period. The proposed regulations are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

D. Reclamation Phase III Revegetation Success Standards for Post-Mining Land Use of Wildlife Habitat (Policy Document)

Louisiana submitted revegetation success guidelines in a policy document that describe the standards and procedures for determining revegetation success on wildlife habitat. The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program. Louisiana developed its revegetation success guidelines for wildlife habitat to satisfy this requirement. The guidelines for wildlife habitat include revegetation success standards and statistically valid sampling techniques for measuring revegetation success of reclaimed wildlife habitat in accordance with Louisiana's counterpart to 30 CFR 816.116. Louisiana's standards, criteria, and parameters for revegetation success on wildlife habitat reflect the extent of vegetative cover, species composition, and soil stabilization required in the Federal regulations at 30 CFR 816.111. As required by the Federal regulations at 30 CFR 816.116(a)(2) and (b), Louisiana's revegetation success standards include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover and trees and shrubs stocking and

production suitable to the approved postmining land use of wildlife habitat. Louisiana's guidelines specify the procedures and techniques to be used for sampling, measuring, and analyzing vegetation parameters. Ground cover, production, and stocking suitable to the approved postmining land use of wildlife habitat is considered equal to the approved success standard when they are not less than 90 percent of the success standard. Sampling techniques for measuring success use a 90-percent statistical confidence interval. We find that use of these procedures and techniques will ensure consistent, objective collection of vegetation data.

Appendices are included in the policy document. Appendix A—Selection of Random Sampling Sites includes procedures for selecting random sampling points, a set of random numbers, and an example of how to perform a random sample locations grid overlay. Appendix B—Data Form for Measuring Ground Cover Using a Pin Method and Appendix C—Example Data Form for Sampling Circles are data forms used for recording data and calculating the results from performing ground cover measurements and tree and shrub stocking measurements, respectively. Appendix D—T-Table, provides the t-values that are used for the sample adequacy calculations. Appendix E—Example Use of Sample Adequacy Formula for Ground Cover Measurements and Appendix F—Example Use of Sample Adequacy Formula for Tree and Shrub Counts give examples of how to determine sample adequacy for ground cover and tree and shrub counts, respectively. Appendix G—Statistical Analysis on Ground Cover Measurements and Appendix H—Statistical Analysis on Tree and Shrub Stocking Measurements describe how to perform statistical analyses on the ground cover and tree and shrub stocking data, respectively, to determine if there is a statistically significant difference between the data and the success standards if the data do not meet the success standards. Appendix I—Acceptable Plant Species for Revegetation of Wildlife Habitat Land Use lists plant species that are acceptable for use on land reclaimed for wildlife habitat. Appendix J—References provides a list of reference materials. Appendix K—Measuring Ground Cover Using a Pin Method is the last appendix in the policy document. This appendix describes how to perform ground cover measurements using a metal pin or a cross-hair sighting device.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its

approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana proposed to adopt a detailed policy illustrating the methods permittees may use to measure revegetation success for wildlife habitat. The policy document is not inconsistent with and is no less effective than the Federal regulations. Therefore, we are approving it.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Louisiana program (Administrative Record No. LA-367.04). We received comments from two Federal agencies, the FWS and the U.S. Army Corps of Engineers (Administrative Record Nos. LA-367.02 and LA-367.03, respectively).

All of the FWS comments pertained to wildlife habitat. The FWS stated that it is pleased that Louisiana is developing post-mining reclamation and revegetation success standards for wildlife habitat. The agency also made several recommendations and suggestions concerning the following topics: (1) Control of noxious plants on reclaimed sites, (2) the time frame for when to begin stocking of trees and shrubs, (3) unacceptable vegetation not approved in the permit, and (4) scientific and common names of acceptable plant species for revegetation of wildlife habitat. In a specific comment regarding the time frame for when to begin stocking of trees and shrubs, the FWS believed that Louisiana's proposed regulations at Section 5425.B. implied that it would take five years to determine acceptable ground cover and that woody vegetation could not be planted until after this 5-year period. The FWS's concern was that because it takes many years for tree species to reach maturity it believed that an effort should be made to plant woody vegetation as soon as possible. Louisiana's proposed regulations at Section 5425.B. do not require delaying the planting of trees and shrubs until after the determination of successful ground cover is made. Therefore, woody vegetation can be planted before this determination is made thereby resolving any concerns the FWS may have regarding this matter. On January 25,

2002 (Administrative Record No. LA-367.06), we forwarded the FWS's comments to Louisiana. By telephone, the State informed us that it would have to study the comments before responding to them (Administrative Record No. LA-367.08). In a letter dated June 11, 2002 (Administrative Record No. LA-367.05), we received Louisiana's response to the FWS comments. Louisiana stated that it felt that its proposed revegetation success standards are consistent with SMCRA and no less effective than the Federal surface mining regulations. As stated in III. OSM's Findings, we find that Louisiana's proposed amendment is no less effective than the Federal regulations. Therefore, we are approving it.

The U.S. Army Corps of Engineers stated in a letter we received on November 19, 2001, that it found Louisiana's proposed amendment satisfactory (Administrative Record No. LA-367.03).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from the 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 Louisiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. LA-367.04). 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 October 16, 2001, we requested comments on Louisiana's amendment (Administrative Record No. LA-367.04), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Louisiana on October 2, 2001, with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 918, which codify decisions concerning the Louisiana 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 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 OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 918 is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

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

2. Section 918.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *		
October 2, 2001	November 15, 2002	LAC Sections 5423.B.1.e. and 8.a.; 5424; 5425; and policy document titled, "Reclamation Phase III Revegetation Success Standards for Post-Mining Land Use of Wildlife Habitat.

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BILLING CODE 4310-05-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08-02-030]

RIN 2115-AE47

Drawbridge Operation Regulation; Portage Bayou, Pass Christian, MS

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the draw of the Portage bascule bridge across Portage Bayou, mile 2.0, at Pass Christian, Mississippi. The existing bridge has been removed from service and a replacement bridge will be constructed on the same alignment. Since the bridge is being removed, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective November 15, 2002.