# DEPARTMENT OF THE INTERIOR

# Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 918

#### Louisiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Louisiana regulatory program (hereinafter referred to as the

"Louisiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Louisiana proposed revisions to its rules and provided a clarifying policy statement, both of which pertain to revegetation success standards on reclaimed land developed for use as forestry. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations. **EFFECTIVE DATE:** January 24, 1995.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

#### SUPPLEMENTARY INFORMATION:

### I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning Louisiana's program and program amendments can be found at 30 CFR 918.15 and 918.16.

# **II. Proposed Amendment**

By letter dated November 2, 1994, Louisiana submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. LA-351). Louisiana submitted the proposed amendment in response to the required program amendments at 30 CFR 918.16 (a) and (b). The provision of the Louisiana Surface Mining Regulations (LSMR) that Louisiana proposed to revise was LSMR 5423.B.4.a, concerning standards for success of revegetation at final bond release on reclaimed lands developed for forestry. Louisiana also proposed an associated Policy Statement No. PS-5, Revegetation Success Standards for Tree and Shrub

Stocking on Lands With a Postmining Land Use of Forestry. In addition, Louisiana proposed to recodify LSMR 53101 through 53139 as LSMR 5401 through 5439, and LSMR 67101 through 67139 as LSMR 6801 through 6839.

OSM announced receipt of the proposed amendment in the November 23, 1994, **Federal Register** (59 FR 60342), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. LA–351.02). Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 23, 1994.

## **III. Director's Findings**

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Louisiana on November 2, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

### 1. Nonsubstantive Revisions to Louisiana's Rules

Louisiana proposed revisions to the following previously-approved rules that are nonsubstantive in nature.

a. Recodification of Louisiana's rules. In order to be consistent with the Louisiana State Code, Louisiana proposed recodification of segments of its rules. In Chapter 53, permanent program performance standards for surface mining activities, LSMR 53101 through 53139 were recodified as LSMR 5401 through 5439. In Chapter 67, special rules applicable to surface coal mining review hearings and appeals, LSMR 67101 through 67139 were recodified as LSMR 6801 through 6839. No revisions of the text of these rules with the exception of those discussed in finding No. 2 below, were proposed by Louisiana.

Because the proposed recodification is nonsubstantive in nature, the Director finds that the recodification does not cause Louisiana's rules at LSMR 5401 through 5439 and LSMR 6801 through 6839 to be less effective than the counterpart Federal regulations at 30 CFR Part 816 and the Federal administrative procedures at 43 CFR Part 4. The Director approves the recodification.

b. *LSMR 5423.B.4.* At LSMR 5423.B.4, Louisiana proposed to delete the phrase "technical documents." LSMR 5423.B.4.a (discussed below) specifies technical success standards for areas developed for forestry. At LSMR 5423.B.1 through 3, for land uses other than commercial forestry, an applicant is given the option of developing revegetation success standards from reference areas, historic records, or technical documents. Because Louisiana, at LSMR 5423.B.4, does not allow for the development of success standards based on technical documents, the proposed deletion of the phrase "technical documents" is an editorial revision that eliminates confusion.

Because this proposed revision is nonsubstantive in nature, the Director finds that this proposed rule is no less effective than the counterpart Federal regulations at 30 CFR 816.116(b)(3). The Director approves this rule.

## 2. LSMR 5423.B.4.a and Policy Statement PS–5, Standards for Success of Revegetation at Final Bond Release on Reclaimed Lands Developed for Use as Forestry

At 30 CFR 918.16(a), OSM required that Louisiana revised LSMR 5423.B.4.a (previously codified as 53123.B.4.a), or otherwise modify its program, to require that trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall (1) have utility for the approved postmining land use and (2) be healthy. At 30 CFR 918.16(b), OSM required that Louisiana revise LSMR 5423.B.4.a, or otherwise modify its program, to either (1) clarify, by policy statement, that proposed LSMR 5423.B.4.a requires that 100 percent (i.e., all countable stems) of the trees must be in place for a minimum of 60 percent of the responsibility period or (2) add the requirement that at least 80 percent of the trees and shrubs used to determine success of revegetation shall have been in place for 60 percent of the applicable minimum period of responsibility (finding Nos. 1.b and 1.c, 59 FR 48171, September 20, 1994). Louisiana's proposed revisions in response to these required amendments are discussed below.

a. *LSMR 5423.B.4.a.* Louisiana proposed to revise LSMR 5423.B.4.a by adding the requirements that the trees that will be used in determining the success of stocking and the adequacy of the plant arrangement shall (1) "have utility for the approved postmining land use" and (2) "be healthy."

The Federal regulations at 30 CFR 816.116(b)(3)(ii) include the requirements that the trees and shrubs used in determining the success of stocking and the adequacy of the plant arrangement shall (1) have utility for the approved postmining land use and (2) be healthy.