

SCS commented that Oklahoma should revise the definition of "productivity" in Appendix A in the Bond Release Guidelines to refer to the "amount of total standing biomass" rather than "harvestable standing biomass." In response to this SCS comment, Oklahoma at its own initiative in its September 2, 1994, submittal, revised the definition of "productivity" as recommended by the SCS. As discussed in finding No. 2.i above, the Director is approving Oklahoma's proposed revision of the definition of "productivity" in Appendix A.

Finally, SCS responded on October 14, 1994, that because all revisions previously discussed with the Oklahoma State Office had been included in Oklahoma's September 2, 1994, revised amendment, it had no further comments (administrative record No. OK-959.25).

b. *Other Federal agencies.* The U.S. Fish and Wildlife Service responded on February 15 and August 3, 1994, that it had no comments on the proposed amendment (administrative record Nos. OK-959.02 and OK-959.13).

The U.S. Bureau of Mines responded on February 16 and September 25, 1994, that it had no comments regarding the proposed amendment (administrative record Nos. OK-959.03 and OK-959.23).

The U.S. Army Corps of Engineers responded on February 25, August 10, and September 30, 1994, that the proposed revisions were satisfactory (administrative record Nos. OK-959.04, OK-959.17, and OK-959.24).

The U.S. Bureau of Land Management responded on October 12, 1994, that the Bond Release Guidelines appeared to be technically correct (administrative record No. OK-959.26).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Oklahoma proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. OK-960). EPA responded on August 24, 1994, that it had no objections to approval of the proposed

revisions (administrative record No. OK-962).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. OK-960). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with additional requirements, Oklahoma's proposed amendment as submitted on February 17, 1994, and as revised and supplemented with additional explanatory information on July 21 and September 2, 1994.

With the requirement that Oklahoma further revise the Bond Release Guidelines, the Director approves, as discussed in: finding No. 2.e, subsections IV.A.1.a and b, and sections VII.A and B, concerning revegetation success standards for diversity, seasonality, permanence, and regeneration; and finding No. 2.f, subsections V.B.2.d and V.B.2.e, concerning the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmlands.

The Director approves Oklahoma's revisions to the Bond Release Guidelines, as discussed in: finding No. 1, Appendices J and V, concerning nonsubstantive editorial revisions; finding No. 2.a, subsection I.E.3.b, concerning requirements for ground cover on land reclaimed for commercial or industrial use; finding No. 2.b, subsection I.F.3.d, concerning requirements for ground cover on previously mined areas; finding No. 2.c, subsection I.F.5.b, concerning the requirements for water discharged from permanent impoundments, ponds, diversions, and treatment facilities; finding No. 2.d, subsections II.B.2.d, III.B.2.d, and V.B.2.c, concerning the method for calculating a technical productivity standard on pastureland, grazingland, and prime farmland; finding No. 2.g, subsections V.B.2.f and VI.B.2.e, concerning the method for calculating a technical productivity standard for grain or hay crops on prime and nonprime farmland; finding No. 2.h, subsection VI.B.2.e, concerning the method for measuring row crop production on nonprime farmland; finding No. 2.i, Appendix A, concerning the definition of "productivity;" finding No. 2.j, Appendices A and R, concerning the definition of "initial

establishment of permanent vegetative cover" and the repair of rills and gullies as a normal husbandry practice; and finding No. 2.k, Appendix F, concerning the method of production sampling, and Appendix O, concerning the methods of calculating technical productivity standards on pastureland and grazingland.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 936.16 that, within 60 days of the publication of this final rule, Oklahoma must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Oklahoma's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) 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 since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) 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