

established by the Fish and Boat Commission and the Game Commission.

Section 89.86(e)(2)(ii)(C)

(C) When the approved postmining land use is wildlife habitat, a minimum of 75% of the land affected shall be planted with a mixture and minimum of 400 woody plants per acre. The configuration and species composition of the cover types shall be established in accordance with guidelines established by the Fish and Boat Commission and the Game Commission.

Section 90.155(d)

(d) When the approved postdisposal land use is wildlife habitat, unless alternative plans are approved by the Department, a minimum of 75% of the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines of the Fish and Boat Commission and Game Commission.

While similar to the Federal regulations at 30 CFR 816/817.116(b)(3)(i), the regulations cited above do not require that minimum stocking and planting arrangements be established upon consultation and approval by the State agencies responsible for the administration of the forestry program. In Pennsylvania, the Bureau of Forestry is responsible for the administration of the forestry program. Therefore, in the April 8, 1993 **Federal Register** (58 FR 18149), we required Pennsylvania to amend sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) to require approval by the Bureau of Forestry on either a site-by-site or program-wide basis.

By letter dated January 30, 2002, Pennsylvania Department of Environmental Protection (DEP) submitted a comparison of the State regulations referred to above and the corresponding Federal regulations along with its explanation of why Pennsylvania's regulations are as effective as their Federal counterparts. Following this correspondence, OSM's Harrisburg Field Office, by letter dated February 22, 2002 (Administrative Record No. PA-803.24), submitted a request to the Bureau that it review the regulations at issue. By letter dated March 20, 2002 (Administrative Record No. PA-803.25), the Bureau approved the subject regulations.

In its letter, the Bureau stated that it "approve[d] of the Pennsylvania DEP Protection Regulations, particularly the relevant portions of sections 87.151(d), 89.86(e)(2)(ii)(C), 90.155(d), 90.155(C), 87.155(b)(2), 89.86(e)(2)(ii), and 90.159(b)(2)." The latter four regulations approved in the Bureau's letter contain species composition and configuration

rules that apply to reclaimed forest land. Because the Bureau has approved the configuration and species composition for reclaimed forest land, as required under 30 CFR 938.16(fff), we are proposing to remove the required amendment.

We note that, in its letter, the Bureau did not specify whether it was approving Pennsylvania's regulations on a site-by-site or a program wide basis, as required in 30 CFR 938.16(fff). However, in its January 30, 2002, letter to us, the State pointed out that "[c]onsultation with the Pennsylvania Bureau of Forestry occurred on a program wide basis during development of the primacy regulations in the early 1980s. In addition, the configuration and species composition for reclaiming forest land is reviewed and approved on a permit-by-permit basis by foresters in the District Mining Office."

Finally, the Bureau noted in its approval that "[w]hile we approve of the regulations as written, we would like to point out that they could be improved with language that promotes the use of native species when practical, and to *not* use the invasive species on [Department of Conservation and Natural Resources] list of invasive species." (emphasis in original). We, too, encourage the use of native species, when practical, and discourage the use of invasive species. However, because the Bureau's suggestion is not a contingency on its approval, we are proposing to remove the required amendment.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. PA-142-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782-4036.

#### *Availability of Comment*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public