

Director approves these proposed revisions.

ii. *Chapter II, Section G, replacement and nonreplacement shelterbelts.* North Dakota proposed to revise Chapter II, Section G to (1) clarify that the standards in Section G apply to all shelterbelts that are specified in the reclamation plan as a postmining land use or as otherwise required as part of the approved permit, and (2) delete from Section G the discussion of "replacement" and "nonreplacement" shelterbelts and their associated success standards. North Dakota explained in the cover letter to its May 11, 1995, revisions, that the intent of the provision for shelterbelts otherwise required as part of the approved permit was to give North Dakota the flexibility to require, by permit condition, that certain shelterbelts not proposed as part of the postmining land use may be required to meet the standards in Section G.

As discussed Finding No. e.i above, North Dakota has revised Chapter II, Sections F and G to require revegetation success standards for shelterbelts that are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

The allowance for North Dakota to require, as a condition of permit approval, shelterbelts that meet the requirements proposed in Chapter II, Section G, has no counterpart in the Federal regulations. North Dakota's proposal to require shelterbelts (with the requisite performance standards for demonstrating success of revegetation) as a condition of permit approval is not inconsistent with the Federal regulations at 30 CFR 773.15(c) and 773.17, concerning permit approval and permit conditions.

Because North Dakota has proposed to require the same success standards for all areas designated with the postmining land use of shelterbelts, the Director finds that these proposed revisions in Chapter II, Section G are no less effective than the requirements for shelterbelts in the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), and approves the proposed revisions.

f. *Chapter II, Section H, revegetation success standards for fish and wildlife habitat.* At 30 CFR 934.16(g), OSM required that North Dakota revise its revegetation document or otherwise amend its program to require that vegetative ground cover on lands reclaimed to fish and wildlife habitat equal at least 90 percent of the success standard (Finding No. 7.a, 54 FR 10141, 10142, March 10, 1989).

North Dakota proposed to revise Chapter II, Section H, concerning

reclaimed lands developed for use as fish and wildlife habitat according to vegetation type, to require that (1) for woodland and shelterbelts, the permittee address the requirements specified in, respectively, Sections F and G (Section F requires that ground cover on the reclaimed area equal or exceed 90 percent of the approved standard; Section G requires that density and vigor equal or exceed the approved standard and erosion be adequately controlled); (2) for grassland, the ground cover must be equal to or greater than the approved standard; and (3) for wetland, vegetation zones and dominant species must be equal to those of the approved standard. North Dakota already required in Section H, for annual crops, a demonstration that the height of the standing grain crop or residual cover is equal to or greater than the approved standard.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that the standards for success for ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard.

The Director finds that North Dakota's revisions of Chapter II, Section H, concerning the requirement that success standards for fish and wildlife habitat equal or exceed at least 90 percent of the approved standards for each vegetation type, are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The Director approves the proposed revisions and removes the required amendment at 30 CFR 934.16(g).

g. *Chapter II, Sections F and H, consultation and approval by State forestry and wildlife agencies.* At 30 CFR 934.16(h), OSM required that North Dakota submit documentation that it has obtained the concurrence of the appropriate State forestry and wildlife agencies with the revegetation success standards for lands reclaimed to fish and wildlife habitat, recreation, shelterbelt, or woodland uses, or shall submit revisions to its revegetation document and North Dakota Administrative Code 69-05.2-22-07 or otherwise amend its program to require such concurrence on a permit specific basis (Finding No. 8, 54 FR 10141, 10143, March 10, 1989).

North Dakota submitted letters of concurrence from the North Dakota Forest Service and the North Dakota Game and Fish Department, dated, respectively, April 21, and May 19, 1989. In these letters, the State agencies concurred with the standards for woodland and fish and wildlife habitat in Chapter II, Sections F and H, of North

Dakota's revegetation document. In its response to OSM's September 9, 1994, issue letter, North Dakota explained that these 1989 concurrence letters are still applicable because, although the original revegetation document included shelterbelts as part of the woodland section, the stocking and planting arrangements and success standards for woodland and fish and wildlife habitat have not been revised since the letters were obtained. North Dakota refers the permittee to standards approved by the NRCS for shelterbelts (see Finding No. 2.e.i above for a discussion of the requirements for shelterbelts).

The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require, for areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products, that minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs.

Based on the 1989 letters of concurrence from the North Dakota Forest Service and the North Dakota Game and Fish Department, the Director finds that North Dakota's revegetation document is no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i), and removes the required amendment at 30 CFR 934.16(h).

h. *Appendix A, augmentation practices.* At 30 CFR 934.16(i), OSM required that North Dakota revise the definition of augmentation practices in its revegetation document to be consistent with 30 CFR 816.116(c)(4) (Finding No. 9, 54 FR 10141, 10143, March 10, 1989).

In Appendix A, North Dakota proposed to delete the existing definition of "augmentation practices" (which meant those practices used to reestablish or replace vegetation or make temporary improvements to obtain bond release) and replace it with a definition of "augmentation practices" meaning those practices which exceed the commonly used management practices on similar unmined lands in the surrounding area. North Dakota also revised Appendix A to state that the use of an augmentation practice on reclaimed lands will reinitiate the liability period and to provide examples of augmentation practices including (1) fertilization or irrigation on cropland, hayland, and pastureland, that is not used as specified in the management plan or that is used in excessive