

amounts (based on soil tests and historic use), (2) fertilization or irrigation used to boost production on native grassland, or on grasslands in fish and wildlife habitat, (3) reseeding native grasslands, pasturelands, or grasslands in fish and wildlife habitat to reintroduce the desired species, (4) extensive replanting, plugging, or addition of soil containing propagules on wetlands, (5) extensive replanting in woodlands or shelterbelts, (6) any significant surface modifications which redisturb the topsoil, and (7) any change in land use that requires a seed mix modification to support the intended land use.

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) provide for the approval of selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, that would not extend the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area.

The Director finds that North Dakota's proposed definition of augmentation practices is consistent with the Federal regulations concerning normal husbandry practices at 30 CFR 816.116(c)(4) and 817.116(c)(4). The Director approves the proposed revisions and removes the required amendment at 30 CFR 934.16(i).

i. *Chapter II, Section C, NRCS consultation regarding methods for measuring productivity on prime farmlands and approval for yield determination methods on prime farmlands.* At 30 CFR 934.16 (w) and (x), OSM required that North Dakota revise its revegetation document to submit evidence of, respectively, (1) NRCS (formerly the Soil Conservation Service) consultation regarding the approved methodologies for measuring productivity on prime farmlands and (2) NRCS concurrence regarding the approved methods for determining yield standards for prime farmlands (Finding Nos. 28.a and b, 57 FR 807, 823, January 9, 1992).

North Dakota submitted with its revised amendment a December 15, 1994, letter from the NRCS in which the NRCS stated that it had reviewed and concurred with standards and sampling procedures for proving reclamation success on prime farmlands that are

outlined in North Dakota's revegetation document. The NRCS identified its Soil Tech Note 2, dated 1987, as the most current reference guideline concerning productivity indexes and agreed that the sampling designs are adequate. The NRCS also stated that the use of small grains to prove production is applicable in the area because corn or other deep rooting crops are not generally grown in west and west central North Dakota.

The Federal regulation at 30 CFR 823.15(b)(2) requires, in part, that prime farmland soil productivity shall be measured using statistically valid sampling techniques that are approved by the regulatory authority in consultation with the NRCS. The Federal regulation at 30 CFR 823.15(b)(6) requires that the reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland and that where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops. The Federal regulation at 30 CFR 823.15(b)(7) requires the NRCS concurrence regarding the approved methods for determining yield standards for prime farmlands.

Based on the December 15, 1994, NRCS letter to North Dakota, the Director finds that North Dakota's revegetation document revisions are no less effective than the Federal regulations at (1) 30 CFR 823.15(b), concerning consultation and concurrence with the NRCS for prime farmlands, and (2) 30 CFR 823.15(b)(6), concerning the use of small grains (spring wheat) rather than corn or other deep rooting crops to prove production. The Director removes the required amendments at 30 CFR 934.16 (w) and (x).

3. *Substantive Revisions to North Dakota's Revegetation Document Proposed as State Initiatives*

a. *Chapter II, Section C, demonstration of productivity prior to bond release on prime farmland.* North Dakota proposed to revise Chapter II, Section C, to require for third-stage (equivalent to the Federal program's phase II) bond release on prime farmland, that productivity must be equal to or greater than that of the approved reference area or standard with 90 percent statistical confidence. This is identical to the requirement for third-stage bond release on prime farmland in North Dakota's rule at North Dakota Administrative Code (NDAC) 69-05.2-22-07(3)(c). The revegetation

document at Chapter 11, Section C and North Dakota's rule at NDAC 69-05.2-22-07(4)(d) require for final or fourth-stage (equivalent to the Federal program's phase III) bond release on prime farmland that productivity equal to or greater than the standard must be demonstrated in each of the last 3 consecutive growing seasons of the responsibility period. In addition, North Dakota's rule at NDAC 69-05.2-26-05(3)(c) requires that the measurement period for determining crop production is that specified in NDAC 69-05.2-22-07(4)(d) for fourth-stage bond release on prime farmland described above).

The Federal regulations at 30 CFR 800.40(c)(2) require that no part of a phase II bond shall be released until soil productivity for prime farmland has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 507(b)(16) of the Act and 30 CFR Part 823. The Federal regulations at 30 CFR 823.15(b)(3) require that the measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond. The Federal regulations at 30 CFR 823.15(b)(5) require that restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices. Therefore, the Federal regulations at 30 CFR 800.40, concerning phase II bond release on prime farmland, and 30 CFR 823.15(b), concerning the measurement for success of productivity on prime farmland prior to bond release, clearly require a successful demonstration of productivity using 3 years of data prior to phase II bond release (equivalent to North Dakota's third-stage bond release).

North Dakota's existing rule at NDAC 69-05.2-22-07(3)(c) and proposed revision in Chapter II, Section C in its revegetation document require that a permittee demonstrate productivity on prime farmland at third-stage bond release. However, North Dakota's existing rules at NDAC 69-05.2-22-07(4)(d) and 69-05.2-26-05(3)(c) and Chapter II, Section C in its revegetation document require that the 3-year measurement period for making a demonstration of productivity occur prior to fourth-stage bond release. The