

bring this document into compliance with regulatory language previously approved by OSM in the March 2, 2001, **Federal Register** (66 FR 13015). The section of the regulations that was approved, NDAC 69-05.2-22-07(4)(l), deals with evaluating revegetation success on prime farmlands and timeframes for demonstrating revegetation success.

Language throughout the document was, in general, revised to specify the last two "consecutive" growing seasons; to delete, "in the case of non-prime farmlands;" and "out of five consecutive years; to change eighth year to sixth year; and add "with one year being the last year" to read as follows:

in each of the last two consecutive growing seasons or any three years starting no sooner than the sixth year and with one year being the last year of the responsibility period.

This revision reflects the previously-approved change to NDAC 69-05.2-22-07(4)(l) and is no less effective.

In the cropland portion of the success standards document, language was added that specifies that a separate success standard must be calculated for prime farmland tracts unless a single yield standard has been approved as allowed by NDAC 69-05.2-22-07(4)(1), as follows:

A separate success standard must be calculated for prime farmland tracts unless a single yield standard has been approved as allowed by NDAC 69-05.2-22-07(4)(l)." and "For reclaimed prime farmland, a separate yield standard must be calculated for that tract and three years (not necessarily consecutive) of data must be submitted that demonstrates that the productivity is equal to or greater than the approved standard with 90% statistical confidence. Alternatively, if a single standard has been approved and calculated for a reclaimed tract containing a mixture of prime and non-prime farmlands as allowed by NDAC 69-05.2-22-07(4)(l), data must be submitted which demonstrates that productivity is equal to or greater than the approved standard (with 90% statistical confidence) in any three years starting no sooner than the sixth year and with one year being the last year of the responsibility period.

This revision also reflects the approved change to NDAC 69-05.2-22-07.4.1 and is no less effective.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. Revisions to North Dakota's Revegetation Policy Document With No Corresponding Federal Regulations

1. Section II-C, Cropland

North Dakota has made several changes to this section of its guidelines. These include (1) revising the equations to estimate summer fallow or continuous cropping yields to include equations for Durum wheat as well as spring wheat and to include equations for Adams County and delete Ward County; (2) inclusion of an exemption from the requirement that control areas be established two years prior to demonstrating revegetation success may be granted if documentation is submitted to the Reclamation Division that demonstrates that the management of the control area for the previous two years has been equivalent in effect to that of the reclaimed area; (3) adding a note that allows them to develop climatic correction factors when there is no yield data for a productivity index equal to 100 available for the crop being grown on both the reclaimed and control areas; and (4) revising Cropland Table 1, Spring wheat productivity indexes based on the NRCS' Soils Interpretive Guide published in January 2000.

Because the changes to this section could affect prime farmland, the NRCS has reviewed this proposed revision, as well as all the proposed changes to this document, and determined that the proposed changes are acceptable. The NRCS develops the productivity indices used by the State and is the expert in this area. The NRCS has submitted a letter of concurrence with the proposed changes to this document. Based on this letter and review of the Federal regulations at 30 CFR 816.116 and 823.15, we have determined that the proposed changes are consistent with and no less effective than the Federal regulations.

2. Section II-D, Native Grassland

North Dakota proposes to revise the diversity and seasonality standards for native grasslands. In support of the proposed change, North Dakota states that the changes in the native grassland section simplify the diversity and seasonality standards. The revegetation document previously required that reclaimed native grassland have seasonality and diversity values meeting or exceeding standards derived from either range site reference areas or NRCS range site description data. The modified standards require that at least five native grass species be present on reclaimed native grasslands, but only four native grass species will have to be

present in specified percentages. Of these four species, there must be at least two warm season species and one cool season species. The total relative composition of warm season species must be at least 15% and the native species must be at least 65% of the total species composition. The primary reasons for the revisions to the diversity and seasonality standards are (1) it simplifies the previous methodology that was overly complicated and involved and (2) with the mixing of topsoil materials during the mining and reclamation process, the overwhelming majority of the reclaimed native grassland tracts will be most similar to the "silty" range site.

The Federal regulations at 30 CFR 816.111(a)(1) require, in part, that the permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is diverse. Further, 30 CFR 816.111(b)(2) requires that the reestablished plant species shall have the same seasonal characteristics of growth as the original vegetation. OSM has determined that the proposed diversity and seasonality standards comply with the intent of 30 CFR 816.111 and are no less effective than the Federal regulations.

3. Section II-E, Tame Pastureland

North Dakota has revised its pastureland diversity standard to eliminate the numerical requirement. The revised standard focuses on the presence of the seeded pasture species and the appropriateness of any invading species. The Federal regulations at 30 CFR 816.111(a)(1) require, in part, that "the permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is diverse, effective, and permanent." No numerical standards are specified. OSM has determined that the revised diversity standard for pastureland meets the intent of the requirements of 30 CFR 816.111(a)(1) and is therefore no less effective.

4. Section II-F, Woodland Success Standards

North Dakota proposes several revisions to this section. The majority of the changes to this section are editorial in nature and provide clarification without affecting the currently approved