

FEDERAL REGISTER: 61 FR 17833 (April 23, 1996)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 756

Hopi Tribe Abandoned Mine Land Reclamation Plan

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, a proposed amendment to the Hopi Tribe Abandoned Mine Land Reclamation (AMLR) plan (hereinafter, the "Hopi Tribe plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Hopi Tribe proposed revisions of and additions to plan provisions pertaining to the purpose of the plan; eligible lands and water subsequent to certification; coordination with other programs; land acquisition, management, and disposal; reclamation on private land and rights of entry; public participation; organization of the Hopi Tribe; personnel staffing policies; purchasing policies, procurement procedures, and accounting systems; economic conditions on the Hopi Reservation; a description of flora and fauna at abandoned mine sites; the Hopi Tribe's authority to administer its plan, as amended, in the absence of a specific statute; changing the name of the designated agency; and affirmation that the manual for purchasing policies and procedures is in accordance with the Office of Management and Budget's (OMB) Common Rule. Additionally, the Hopi Tribe is proposing numerous editorial and recodification changes. The amendment revised the Hopi Tribe plan to meet the requirements of and incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, and improve operational efficiency.

EFFECTIVE DATE: April 23, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248-5070.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND ON THE HOPI TRIBE PLAN

On June 28, 1988, the Secretary of the Interior approved the Hopi Tribe plan. General background information on the Hopi Tribe plan, including the Secretary's findings and the disposition of comments, can be found in the June 28, 1988, Federal Register (53 FR 24262). Subsequent actions concerning the Hopi Tribe plan and plan amendments can be found at 30 CFR 756.16, 756.17, and 756.18.

II. PROPOSED AMENDMENT

By letter dated November 2, 1995, the Hopi Tribe submitted a proposed amendment to its plan (administrative record No. HO-148) pursuant to SMCRA (30 U.S.C. 1201 et seq.). The Hopi Tribe submitted the proposed amendment in response to a September 26, 1994, letter (administrative record No. HO-145.1) that OSM sent to the Hopi Tribe in accordance with 30 CFR 884.15(b), and at its own initiative.

The provisions of the Hopi Tribe plan that the Hopi Tribe proposed to revise or add were: the table of contents, including a list of appendices; a preface to the amended reclamation plan; a list of addenda and errata, including a list of figures; the Chairman's letter of designation and Hopi Tribe resolution; the General Counsel's opinion on the authority of the Hopi Tribe to conduct an AMLR program; Part I, purpose of the Hopi Tribe plan; Part II, eligible lands and water subsequent to certification; Part III, coordination of the Hopi AMLR Program with other programs; Part IV, land acquisition, management, and disposal; Part V, reclamation on private land; Part VI, rights of entry; Part VII, Hopi Department of Natural Resources (DNR) policy on public participation; Part VIII, organization of the Hopi Tribe; Part IX, personnel staffing policies; Part X, purchasing policies and procurement procedures; Part XI, accounting systems and management accounting; Part XII, economic conditions on the Hopi Reservation; and Part XIII, a description of flora and fauna at abandoned mine sites. The Hopi Tribe also proposed numerous minor editorial and grammatical revisions and recodification changes. Finally, the Hopi Tribe proposed changes to the appendices included in its plan as follows: (a) provided as "Appendix 1," the "Constitution and By-Laws of the Hopi Tribe," which was approved December 19, 1936, and amended on August 1, 1969, February 14, 1980, and December 7, 1993, (b) provided cover pages for Appendices 2 through 12, and (c) changed the title of Appendix

7 from "Hopi Tribe Resolution H-93-80" to "Hopi Tribe Resolution H-93-80 and Subsequent Correspondence to the Bureau of Census."

In addition, the Hopi Tribe proposed the deletion of the following sections in their entirety: (a) Section 884.13(e)(1), which is replaced by specific criteria for eligible lands and waters subsequent to certification at Part II of the Hopi Tribe plan; (b) Sections 884.13(e)(2) and 884.13(e)(3), which are replaced by a description of current problems and needs and current proposals at Part II, section H of the Hopi Tribe plan; and (c) Section 884.13(f)(2), Description of Aesthetic, Cultural and Recreational Conditions of the Hopi Reservation.

The Hopi Tribe also proposed adding the following items to its plan: (1) A memorandum dated May 18, 1995, from the Hopi Tribe's Assistant General Counsel affirming the authority of the Tribe's AMLR Program to administer the Hopi Tribe plan as amended in the absence of any AMLR statute; (2) Hopi Tribal Resolution H-134-89 that provides documentation of the Tribe's action changing the name of the Office of Natural Resources to the Department of Natural Resources; and (3) a memorandum dated August 31, 1995, from the Tribe's Office of Financial Management that affirms that the Hopi Tribe "Purchasing Policies and Procedures Manual" is in accordance with OMB's Common Rule.

OSM announced receipt of the proposed amendment in the December 7, 1995, Federal Register (*60 FR 62786*), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. HO-150). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 8, 1996.

III. DIRECTOR'S FINDINGS

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds, with certain exceptions and additional requirements, that the proposed plan amendment submitted by the Hopi Tribe on November 2, 1995, meets the requirements of the corresponding Federal regulations and is consistent with SMCRA. Thus, the Director approves the proposed amendment.

1. NONSUBSTANTIVE REVISIONS TO THE HOPI TRIBE PLAN PROVISIONS

The Hopi Tribe proposed revisions to the following previously-approved plan provisions that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding Federal regulation or SMCRA provisions are listed in parentheses):

Table of Contents (there are no counterpart Federal regulations or SMCRA provisions), title of Part II, "Eligible Lands and Waters Subsequent to Certification;"

Table of Contents, (there are no counterpart Federal regulations or SMCRA provisions), List of Appendices;

List of Addenda and Errata, (there are no counterpart Federal regulations or SMCRA provisions), title for this part;

List of Figures, (there are no counterpart Federal regulations or SMCRA provisions), title of Figure 4 and deletion of Figure 5;

Chairman's Letter of Designation and Hopi Tribe Resolution, (30 CFR 884.13(a)), designation of agency authorized to administer approved plan;

Opinion of Legal Counsel, (30 CFR 884.13(b)), authority of designated agency to conduct the AMLR program in accordance with the requirements of Title IV of SMCRA;

Part III, (30 CFR 884.13(c)), coordination of Tribal AML programs with other programs;

Sections IV, A(2) (c), (d), (e), B(2), and C (30 CFR Part 879), land acquisition, management, and disposal;

Part V and Figures 1 and 2, (30 CFR Part 882), reclamation on private land;

Sections VI, A, B, and C, (30 CFR Part 877), rights of entry;

Part VII, (30 CFR 884.13(c)(7)), Hopi DNR policy on public participation;

Part VIII and Figure 4, (30 CFR 884.13(d)(1)), organization of the Hopi Tribe;

Part IX, (30 CFR 884.13(d)(2)), personnel staffing policies;

Part X, (30 CFR 884.13(d)(3)), purchasing and procurement;

Part XI, (30 CFR 884.13(d)(4)), management accounting;

Deletion of section 884.13(e)(1) [replaced by Part II] and deletion of sections 884.13(e) (2) and (3) [replaced by section II, H], (30 CFR 884.13 (c) (1) and (2)), purpose of Hopi Tribe reclamation plan and criteria for ranking and identifying projects;

Part XIII, (30 CFR 884.13(f)(2), flora and fauna;

Appendices 1 through 12, (there are no counterpart Federal regulations or SMCRA provisions), addition of cover pages; and

Appendix 7, (there is no counterpart Federal regulation or SMCRA provision), change of title of appendix.

Because the proposed revisions to these previously-approved Hopi Tribe plan provisions are nonsubstantive in nature, the Director finds that they meet the requirements of the Federal regulations and are consistent with the corresponding provisions of SMCRA. Therefore, the Director approves the proposed revisions to these plan provisions.

In addition, the Director is accepting the following supporting documents for inclusion to the Hopi Tribe AMLR plan:

Memorandum from Assistant General Counsel/Legislative Counsel to DNR dated May 18, 1995, concerning elimination of Title IV from the draft Hopi Code Mining Ordinance;

Hopi Tribal Council Resolution H-134-89, adopted August 29, 1989; and

Memorandum from the Hopi Tribe Office of Financial Management to DNR dated September 7, 1995, concerning purchasing procedures.

2. SUBSTANTIVE REVISIONS TO THE HOPI TRIBE PLAN PROVISIONS THAT ARE SUBSTANTIALLY IDENTICAL TO THE CORRESPONDING PROVISIONS OF THE FEDERAL REGULATIONS AND SMCRA

The Hopi Tribe proposed revisions to the following plan provisions that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations and SMCRA provisions (listed in parentheses):

Preface to Amended Reclamation Plan, (section 411 of SMCRA and 30 CFR Part 875), program goals and objectives and eligible projects;

Section I, B, (30 CFR 884.13(a)), designation of administrative authority;

Section I, C, (section 403(a) of SMCRA), introductory paragraph for reclamation priorities;

Section I, C (4) and (5), (section 403(a) (4) and (5) of SMCRA), deletion of existing C (4) and recodification of C(5) and (6) and C(4) and (5);

Section I, C, (deleted section 402(g)(2) of SMCRA), deletion of provisions concerning allocation of funds;

Sections II, A(1) (a) through (f), (30 CFR 874.12 (a) through (h)), eligible coal lands and water;

Section II, A(1)(g), (30 CFR 874.16), contractor responsibility;

Sections II, B(1) (a) and (b), (30 CFR 875.14(a) (1) and (2)), eligible lands and water subsequent to certification;

Sections II, B(1)(c), (d)(i) and (iii), (e), and (g), (30 CFR 875.15(a), (b)(1) and (3), (c), and (e)), reclamation priorities for noncoal program;

Sections II, C through F, (30 CFR 875.16, 875.17, 875.19, and 875.20), exclusion of certain noncoal reclamation sites, noncoal land acquisition authority, limited liability, and contractor responsibility;

Section II, H and [deletion of] ranking and selection of noncoal reclamation projects and Table I, Comprehensive/Problem Evaluation Matrix, (30 CFR 884.13 (c) and (e)), description of needs, proposed construction and activities;

Section IV, A(2)(b), (30 CFR 879.11), lands eligible for acquisition;

Part XII, (30 CFR 884.13(f)(1)), economic conditions of the Hopi Reservation; and

Appendix 1, (there is no counterpart Federal regulation or SMCRA provision), Constitution and By-Laws of the Hopi Tribe, as amended.

Because these proposed revisions to the Hopi Tribe plan provisions are substantively identical to the corresponding provisions of the Federal regulations and SMCRA or concern proposed deletions of provisions deleted from Title IV of SMCRA, the Director finds that they meet the requirements of the Federal regulations and are consistent with SMCRA. The Director approves these proposed revisions to the Hopi Tribe plan provisions.

3. PREFACE TO AMENDED RECLAMATION PLAN

The Hopi Tribe proposed the addition of a preface to the Hopi Tribe plan, which provides, in part, a discussion in the introductory paragraph of the reasons for the amended reclamation plan. The preface discusses the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101-508), but there is no mention of the Energy Policy Act of 1992. (Pub. L. 102-486, EPACT), which was enacted October 24, 1992. EPACT amended Title IV of SMCRA in several ways. The Hopi Tribe incorporated in the proposed revisions to the Hopi Tribe plan provisions addressing some of the amended Federal requirements. The Director finds that the preface is consistent with title IV of SMCRA and is in compliance with the implementing Federal regulations, but suggests that the introductory paragraph be revised to also reference the Energy Policy Act of 1992 and provide that the plan amendment has been prepared to be in conformance with it.

The introductory paragraph also provides that the amendment has been prepared to meet the requirements of 30 CFR Parts 870 (Abandoned Mine Reclamation Fund-Fee Collection and Coal Production Reporting), 872 (Abandoned Mine Reclamation Funds), 873 (Future Reclamation Set-Aside Program), 874 (General Reclamation Requirements), 875 (Noncoal Reclamation), 876 (Acid Mine Drainage Treatment and Abatement Program), and 886 (State and Tribal Reclamation Grants). However, the amendment contains no provisions concerning a future reclamation set-aside program or an acid mine drainage treatment and abatement program. The Director recommends that the references to the provisions concerning a future reclamation set-aside program and an acid mine drainage treatment and abatement program should be deleted.

4. SECTION I, A, PURPOSE OF THE HOPI TRIBE AMLR PLAN

a. Section I, A. -The Hopi Tribe proposed to revise Part I to provide a general description of funding priorities similar to those at sections 403 (a) and (b)(1) of SMCRA, which pertain only to coal, and to include reclamation activities pertaining to the adverse effects and impacts of mineral mining and processing practices [noncoal] similar to those provided at sections 411 (c) and (e) of SMCRA.

However, the Hopi Tribe did not retain the distinctions between coal and noncoal by setting out separate provisions for each. Title IV of SMCRA and the Federal regulations distinctly and separately provide requirements concerning coal reclamation at section 403 and 30 CFR Part 874 and noncoal reclamation at section 411 and 30 CFR Part 875. The Director finds that the Hopi Tribe's proposed replacement of the word "coal" with the phrase "mining and processing practices" at section I, A inappropriately combines coal and noncoal reclamation activities, and is, therefore, inconsistent with SMCRA and not in compliance with the Federal regulations. The Director is requiring, in order to properly reflect the objectives and priorities for expenditures of moneys from the abandoned mine land fund, the Hopi Tribe to revise Part I by creating separate

provisions for coal and noncoal reclamation activities in order to be consistent with sections 403 and 411 of SMCRA and in compliance with the Federal regulations at 30 CFR Parts 874 and 875.

b. Section I, A(1). -Section I, A(1) provides, in part, that one purpose of the Hopi AMLR plan is to "protect the health, safety, and general welfare of members of the Hopi Tribe * * *." The language contained in this section is similar to sections 403(a) (1) and (2) and 411(c) (1) and (2) of SMCRA, except that sections 403 and 411 distinguish between the "protection of public health, safety, general welfare, and property from extreme danger of adverse effects" of mining (emphasis added) and the "protection of public health, safety, and general welfare from adverse effects" of mining. Section I, A of the Hopi Tribe plan is a general description of the purpose the plan itself. As such, the Director finds that, even though section I, A(1) does not distinguish between the "extreme danger of adverse effects" and the "adverse effects" of mining and processing practices, the plan at sections I, C (1) and (2) and proposed II, B(1)(d) (i) and (ii) provide for coal and noncoal reclamation priorities, which specifically address the "extreme danger of the adverse effects" and the "adverse effects" consistent with sections 403(a) and 411(c) of SMCRA. Therefore, the Director approves the proposed language of section I, A(1).

c. Section I, A(2).-The proposed revisions at section I, A(2) provide that another purpose of the Hopi AMLR plan is to "restore land and water resources degraded by the adverse effects of mining and processing practices for both aesthetic and conservation reasons." This language is similar to sections 403(a)(3) and 411(c)(3) of SMCRA, except that sections 403 and 411 also provide for the restoration of the environment previously degraded by mining practices; and section 403(a)(3), which concerns coal reclamation only, includes restoration measures for conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. The specific priorities for coal and noncoal reclamation concerning restoration of land and water resources and the environment previously degraded by mining practices are provided for in the Hopi Tribe plan at section I, C(3) and proposed section II, B(1)(d)(iii). These provisions are substantively identical to sections 403(a)(3) and 411(c)(3) of SMCRA. Therefore, the Director finds that the general description concerning restoration of land and water resources provided in the purpose of the Hopi Tribe plan at section I, A(2) is consistent with sections 403 and 411 of SMCRA. The Director approves the revisions to this plan provision.

d. Section I, A(3). -The Hopi Tribe proposed to revise section I, A of the Hopi Tribe plan by adding new language at paragraph (3) "to provide for protecting, repairing, replacing, constructing, or enhancing facilities related to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by mining and processing practices." The Director finds that proposed section I, A(3), which is similar to section 403(b)(1) of SMCRA, is inconsistent with SMCRA for two reasons. First of all, the Hopi Tribe is proposing to extend the provisions of section I, A(3) to noncoal reclamation activities by proposing to change the word "coal" to "mining and processing practices." The provisions of section 403 of SMCRA apply only to coal, and as proposed at I, A(3) in the Hopi Tribe plan, the water replacement provision includes all mining and processing practices, and is not limited to only coal mining practices. Secondly, section 403(b)(1) of SMCRA also only applies in those States or Indian tribes that have not certified to the completion of coal reclamation. The Hopi Tribe provided certification of completion of coal reclamation in a letter from the Chairman and Chief Executive Officer of the Hopi Tribe dated February 2, 1994 (*59 FR 29719*, June 9, 1994). The Director requires the Hopi Tribe to revise its AMLR plan by deleting section I, A(3) and recodifying the subsequent paragraphs accordingly.

e. Section I, A(4).-The Hopi Tribe proposed to add new language at section I, A(4) "to provide for the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by mining and processing practices." This provision is similar to section 403(a)(4) of SMCRA, except that I, A(4) applies to "mining and processing practices" while section 403(a)(4) pertains only to public facilities adversely affected by coal mining practices (emphasis added). Also, subsequent to certification, reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and other facilities that have been adversely affected by mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, are provided for at section 411(e) of SMCRA. Therefore, the Director finds that section I, A(4) is inconsistent with sections 403(a)(4) and 411(e) of SMCRA. The Director is requiring the Hopi Tribe to revise section I, A(4) to reflect the objectives and priorities concerning public facilities set forth at section 411(e) of SMCRA.

5. SECTIONS II, A(1), (f) and (h), COAL RECLAMATION AFTER CERTIFICATION

a. Section II, A.-Section II, A does not contain provisions concerning limited liability for coal reclamation activities similar to the Federal regulations at 30 CFR 874.15. This plan amendment does provide at proposed section II, E limited

liability provisions, which are viewed by OSM, consistent with the Federal regulations at 30 CFR Parts 874 and 875, which provide separate and distinct provisions for coal and noncoal reclamation, including limited liability provisions, as only applying to noncoal reclamation activities. As provided in OSM's September 26, 1994, 30 CFR Part 884 issue letter (administrative record No. HO-145.1), the Hopi Tribe was given the option to adopt limited liability provisions for coal reclamation activities similar to the counterpart Federal regulations at 30 CFR 874.15. Because the Hopi Tribe was given the discretion to determine whether to include in its plan limited liability provisions for coal reclamation activities, the Director finds that section II, A is in compliance with 30 CFR Part 875 and approves section II, A without a specific limited liability provision for coal. The Director cautions the Hopi Tribe, however, that should any coal projects occur subsequent to the Hopi Tribe's certification of completion of coal reclamation, the Hopi Tribe AMLR program may be held liable under Federal law for any costs or damages as a result of any action or omitted action while carrying out its approved abandoned mine reclamation plan. The Hopi Tribe may wish to revise section II, A to extend its limited liability coverage to coal reclamation projects.

b. Section II, A(1).- Proposed section II, A(1) of the Hopi Tribe AMLR plan provides that February 2, 1994, is the effective date of the Hopi Tribe's certification that all known abandoned coal mine problems had been addressed. This date is actually the date that the Hopi Tribe submitted to OSM its certification of completion of coal reclamation with a request for concurrence by the Secretary of the Interior. OSM approved the Hopi Tribe's certification effective June 9, 1994 (see *59 FR 29721*). The Director is not requiring the Hopi Tribe to revise section II, A(1) to reflect the correct effective date because between February 2, 1994, which is the date of the Hopi Tribe's submittal, and June 9, 1994, which is the effective date of the certification, no new coal problems were identified as evidenced by the lack of public response to the proposed rule Federal Register notice seeking public participation in the certification process (see *59 FR 29720*). Therefore, the Director is taking this opportunity to clarify that the effective date of the Hopi Tribe's certification of completion of coal reclamation is June 9, 1994.

Also, proposed section II, A(1) requires the Hopi Tribe to abate coal problems found after the effective date of certification of completion of coal reclamation in the first grant cycle following discovery of any coal problem subject to the availability of funds distributed to the Hopi Tribe in that cycle. The Director finds that this requirement is consistent with the requirements at 30 CFR 875.14(b) of the Federal regulations, except that Section 875.14(b) also provides that "[t]he coal project would be subject to the coal provisions specified in sections 401 through 410 of SMCRA." This language ensures that should a coal problem occur, a State or Indian tribe that has certified to the completion of coal reclamation, would carry out subsequent coal reclamation activities under the State of Indian tribe authorities relating to coal and not pursuant to noncoal authority contained in section 411 of SMCRA. Therefore, the Director approves section II, A(1) to the extent that it requires the Hopi Tribe to abate any new coal problems that arise after the effective date of the certification of completion of coal reclamation and requires the Hopi Tribe to modify section II, A(1) to require that any coal project would be subject to the provisions of sections 401 through 410 of SMCRA or otherwise amend its AMLR plan to provide that new coal projects identified after the effective date of certification would be subject to the coal provisions of SMCRA.

c. Section II, A(1)(h).- The Hopi Tribe proposed at section II, A(1)(h) to require that Form OSM-76 be submitted to OSM upon coal project completion to report accomplishments achieved through the project. This provision is in compliance with the Federal regulations at 30 CFR 886.23 to the extent that the Hopi Tribe is required to submit Form OSM-76 to OSM upon project completion. However, 30 CFR 886.23 also requires the submission of other forms as specified by OSM, including reporting forms for each grant and any other closeout reports. The grant document awarding AML funds to a State or Indian tribe includes a condition requiring the grantee to submit financial status reports, performance reports, and other such reports according to the timing, content, and format as required by OSM. Such documents are signed, not only by the OSM Field Office Director, but also by an officer of the grantee authorized to accept the award with all its conditions. Because the grant reporting requirements are attached to the grant document, the Hopi Tribe AMLR plan appropriately does not need to provide for reports concerning the grant itself. Therefore, the Director finds section II, A(1)(h) is in compliance with the Federal regulations at 30 CFR 886.23 and is not requiring the Hopi Tribe to add requirements at section II, A(1)(h) concerning reporting information on other forms specified by OSM. The Director approves section II, A(1)(h).

6. SECTIONS II, B(1)(d)(ii), (f), and G, NONCOAL RECLAMATION AFTER CERTIFICATION

a. Section II, B(1)(d)(ii).- The Hopi Tribe proposed to add language at section II, B(1)(d)(i) through (iii) to provide criteria for determining the priority of noncoal reclamation projects and construction of facilities. The proposed criteria are similar to the criteria provided in the Federal regulations at 30 CFR 875.15(b)(1) through (3), except that section II, B(1)(d)(ii) of the Hopi Tribe AMLR plan includes, as priority 2, the protection of property from the adverse effects of mineral mining and processing practices. 30 CFR 875.15(b)(2) provides, as priority 2, for the protection of public health,

safety, and general welfare from the adverse effect of mineral mining and processing practices. The Director finds that section II, B(1)(d)(ii) of the Hopi Tribe AMLR plan, by including the protection of property from the adverse effects of noncoal mining as a second level priority, is not in compliance with the Federal regulations, which provide for the protection of property from the extreme danger of the adverse effects of noncoal mining as a level one priority. Therefore, the Director requires the Hopi Tribe to revise section II, B(1)(d)(ii) by deleting the word "property" or otherwise modify its plan to provide the same criteria as that at 30 CFR 875.15(b)(2) for priority 2 noncoal reclamation.

b. Section II, B(1)(f).- The Hopi Tribe proposed at section II, B(1)(f) to provide that where the Chairman of the Hopi Tribe determines there is a need for activities or construction of specific public facilities related to the coal or mineral industry on Tribal lands impacted by coal or mineral development, the Tribe may submit a grant application to OSM requesting funds to carry out such activities or construction. This provision is in compliance with the Federal regulations at 30 CFR 875.15(d), which allow a State or Indian Tribe to request funding for a public facility if the Governor of a State or head of a governing body of an Indian tribe determines there is a need for the construction of a public facility related to the coal or minerals industry. 30 CFR 875.15(d) also requires that where a State or Tribe determines there is a need for activities or construction, the Director of OSM must concur in that need. As discussed in the preamble of the final rule Federal Register notice (see *59 FR 28136, 28162-3*, May 31, 1994), OSM, concerned that the AML program not be sidetracked from its primary mission to reclaim lands and waters damaged by coal and noncoal mining processes, must determine whether a need exists for projects involving the construction of facilities pursuant to section 411(f) SMCRA. This determination is an action carried out solely by OSM, and the State or Tribe is not involved in the determination made by OSM. Therefore, the Hopi Tribe plan does not need to provide for this action. The Director approves section II, B(1)(f), and is taking this opportunity to reiterate that, prior to granting AML funds for public facility projects proposed under section 411(f) of SMCRA and the Federal regulations at 30 CFR 875.15(d), OSM's Director will concur with the Hopi Tribe Chairman's statement of need for such projects.

c. Section II, G.- The Hopi Tribe proposed at section II, G that Form OSM-76 be submitted to OSM upon noncoal project completion to report accomplishments achieved through the project. The Director finds that this provision is in compliance with the Federal regulations at 30 CFR 886.23(b). The Director also notes that the documents awarding grants require, as a condition of acceptance, certain information to be reported by the grantee, which complies with the reporting requirements of 30 CFR 886.23(a). Therefore, the Director approves proposed section II, G (see finding No. 5(c)).

7. SECTIONS IV, A(1), 2(a)(i), and B(1), LAND ACQUISITION, MANAGEMENT, AND DISPOSAL

a. Section IV, A(1).- The Hopi Tribe proposed to revise section IV, A(1) to provide, in part, that land adversely affected by coal and noncoal mining practices, including refuse piles and all coal refuse piles thereon, may be acquired by the Hopi Tribe for the purposes of the reclamation program when the acquisition of the lands meets the requirements of section 407 of SMCRA (emphasis added). This provision is in compliance with the Federal regulations at 30 CFR 879.11(a) and (c), concerning lands eligible for acquisition. However, the Federal regulations at 30 CFR 875.17 extend the land acquisition authority to noncoal. At section IV, A(1), the Hopi Tribe proposed changing the phrase "coal mining practices" to the phrase "coal and noncoal mining practices" in one instance, but did not change "coal refuse" to a term that ensures that refuse on lands adversely affected by noncoal mining practices may also be acquired under this provision. The Director approves section IV, A(1), but requires the Hopi Tribe to revise it by deleting the word "coal" from the phrase "coal refuse thereon" to ensure that this provision extends to refuse on land adversely affected by past noncoal practices.

b. Section IV, A(2)(a)(i).- The Hopi Tribe proposed revisions at section IV, A(2)(a)(i) concerning appraisals to provide for a "valuation of the fair market value * * *" and "principle of best and highest use * * *." The provisions of section IV, A(2)(a)(i) are in compliance with the Federal regulations at 30 CFR 879.12 (a) and (d), except that the language proposed by the Hopi Tribe concerning fair market value and use is not the same language as that used in the recognized standards for acquisitions. 30 CFR 879.12(d) requires OSM or an Indian tribe which acquires land to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), *42 U.S.C. 4601*, et seq., and 41 CFR Part 114-50. URA applies to all Federal or federally-assisted activities that involve the acquisition of real property. The regulations implementing URA are at 49 CFR Part 24. 49 CFR 24.103 requires that a detailed appraisal shall reflect nationally recognized standards, including the Uniform Appraisal Standards for Federal Land Acquisition (see *54 FR 8912, 8934*, March 2, 1989). The "Uniform Appraisal Standards for Federal Acquisitions" handbook, which by reference is the standard required by the Federal regulations at 30 CFR 879.12, provides for a "determination of the fair market value" and "the principle of highest and best use."

Even though the language proposed by the Hopi Tribe at section IV, A(2)(a)(i) does not use the standardized language for appraisals, the Director interprets the terms "valuation of fair market value" and "the principle of best and highest use" as having the same meaning as the recognized standards for a "determination of fair market value" and the "principle of highest and best use." Therefore, the Director finds section IV, A(2)(a)(i) to be in compliance with the Federal regulations at 30 CFR 879.12 and approves the proposed revisions.

c. Section IV, B(1). -As proposed, section IV, B(1) provides that "[I]and acquired under rules of section A of this part Hopi AML Program and Tribal Council concurrence, for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired." The proposed deletion of the phrase "may be used, pending" between the phrases "section A of this part" and "Hopi AML Program and Tribal concurrence" causes the sentence to become unclear. The counterpart Federal regulations at 30 CFR 879.14 provide the missing language as follows: ""[I]and acquired under this part may be used for any lawful purpose." The Director finds that section IV, B(1) is in compliance with 30 CFR 879.14, and approves the proposed revisions concerning the references to "section A" and "this part." The Director, however, requires the Hopi Tribe to remove the deletion of the phrase "may be used, pending."

8. SECTION VI, C, RIGHTS OF ENTRY FOR EMERGENCY RECLAMATION

The Hopi Tribe proposed to delete existing section VI, C concerning entry for emergency reclamation. The Federal regulation at 30 CFR 877.14(a) provides for entry by OSM, its agents, employees, or contractors upon land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal [and noncoal as provided by 30 CFR 875.17] mining practices and to do all things necessary to protect the public health, safety, or general welfare. The preamble of the final rule for 30 CFR Part 877 (see *47 FR 28574, 28583*, June 30, 1982) states that final rule 30 CFR 877.14 concerning emergency reclamation activities applies exclusively to OSM, its agents, employees, and contractors. In the case of emergency reclamation on Hopi Indian lands, OSM is the authority because the Hopi Tribe did not request authority to conduct emergency response reclamation under the original plan approval (see *53 FR 24262*, June 28, 1988) and has not subsequently sought emergency power through the amendment process. Because the emergency program on Hopi Indian lands rests exclusively with OSM, the Director finds the deletion of existing section VI, C of the Hopi Tribe plan to be in compliance with the Federal regulations at 30 CFR Part 877. Therefore, the Director approves the deletion.

9. SECTION 884.13(f)(2), DESCRIPTION OF AESTHETIC, CULTURAL AND RECREATIONAL CONDITIONS OF THE HOPI RESERVATION

The Hopi Tribe proposed deletion of Section 884.13(f)(2), which provided a description of aesthetic, cultural and recreational conditions of the Hopi Reservation. The counterpart Federal regulation at 30 CFR 884.13(f)(2) requires that the reclamation plan include a general description of the conditions prevailing in different geographic areas of the Indian lands where reclamation is planned, including significant esthetic, historic or cultural, and recreational values. The Hopi Tribe did not provide, in this amendment, a justification for the proposed deletion. Because 30 CFR 884.13(f) is a specific requirement for information that shall be included in a State or Tribe reclamation plan, the Director finds that the proposed deletion of Section 884.13(f)(2) of the Hopi Tribe plan is not in compliance with the Federal regulation at 30 CFR 884.13(f)(2). The Director, therefore, requires the Hopi Tribe to remove its proposed deletion of Section 884.13(f)(2) or otherwise provide the information required by 30 CFR 884.13(f)(2) in its reclamation plan.

IV. SUMMARY AND DISPOSITION OF COMMENTS

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. PUBLIC COMMENTS

OSM invited public comments on the proposed amendment, but none were received.

2. FEDERAL AGENCY COMMENTS

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Hopi Tribe plan (administrative record Nos. HO-149 and 152).

The State Historic Preservation Office for the State of Arizona responded on January 9, 1996, that the amendment had been reviewed and stated that the proposed changes did not pertain to cultural resource preservation (administrative record No. HO-151).

V. DIRECTOR'S DECISION

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the Hopi Tribe's proposed plan amendment as submitted on November 2, 1995.

With the requirement that the Hopi Tribe further revise its plan provisions, the Director does not approve, as discussed in:

(1) finding No. 4(a), Part I, concerning the purpose of the Hopi Tribe plan; finding No. 4(d), section I, A(3), concerning facilities related to water supplies; and finding No. 4(e), section I, A(4), concerning public facilities projects;

(2) finding No. 6(a), section II, B(1)(d)(ii), concerning the priority 2 noncoal reclamation activities; and

(3) finding No. 9, Section 884.13(f)(2), concerning proposed deletion of provisions related to a description of aesthetic, cultural and recreational conditions of the Hopi Reservation.

The Director approves, as discussed in:

(1) finding No. 1, the Table of Contents, concerning the title of Part II and List of Appendices; List of Addenda and Errata, concerning the title; List of Figures, concerning the title of Figure 4 and deletion of Figure 5; Chairman's Letter of Designation and Hopi Tribe Resolution, concerning the designation of the Tribal agency authorized to administer the approved plan; Opinion of Legal Counsel, concerning the authority of the designated agency to conduct the AMLR program in accordance with the requirements of Title IV of SMCRA; Part III, concerning coordination of Tribal AML programs with other programs; sections IV, A(2) (c), (d), (e), B(2), and C, concerning land acquisition, management, and disposal; Part V and Figures 1 and 2, concerning reclamation on private land; sections VI, A, B, and C, concerning rights of entry; Part VII, concerning the Hopi DNR policy on public participation; Part VIII and Figure 4, concerning organization of the Hopi Tribe; Part IX, concerning personnel staffing policies; Part X, concerning purchasing and procurement; Part XI, concerning management accounting; deletion of sections 884.13(e) (1), (2), and (3), concerning the purpose of Hopi Tribe reclamation plan and criteria for ranking and identifying projects; Part XIII, concerning flora and fauna; Appendices 1 through 12, concerning the addition of cover pages; Appendix 7, concerning the title of the appendix; a memorandum from the Assistant General Counsel/Legislative Counsel to DNR dated May 18, 1995, concerning the elimination of Title IV from the draft Hopi Code Mining Ordinance; Hopi Tribal Council Resolution H-134-89, adopted August 29, 1989; and a memorandum from the Hopi Tribe Office of Financial Management to DNR dated September 7, 1995, concerning purchasing procedures;

(2) finding No. 2, preface to the amended reclamation plan, concerning program goals and objectives and eligible projects; section I, B, concerning the designation of administrative authority; section I, C, concerning reclamation priorities; sections I, C (4) and (5), concerning deletion of existing C(4) and recodification of C (5) and (6) as C (4) and (5); section I, C, concerning deletion of allocation of funds provisions; sections II, A(1) (a) through (f), concerning eligible coal lands and water; section II, A(1)(g), concerning contractor responsibility; sections II, B(1) (a) and (b), concerning eligible lands and water subsequent to certification; sections II, B(1)(c), (d) (i) and (iii), (e), and (g), concerning reclamation priorities for noncoal program; sections II, C through F, concerning exclusion of certain noncoal reclamation sites, noncoal land acquisition authority, limited liability, and contractor responsibility; section II, H, concerning description of needs, proposed construction and activities, and deletion of ranking and selection of noncoal reclamation projects and Table I, Comprehensive/Problem Evaluation Matrix; section IV, 2(b), concerning lands eligible for acquisition; Part XII, concerning economic conditions of the Hopi Reservation; and Appendix 1, concerning the amended constitution and by-laws of the Hopi Tribe;

(3) finding No. 3, preface to the amended reclamation plan, concerning the introductory paragraph;

(4) finding No. 4(b), section I, A(1), concerning the protection of the health, safety, and general welfare of members of the Hopi Tribe and finding No. 4(c), concerning the restoration of land and water resources;

(5) finding No. 5(a), section II, A, concerning limited liability provisions for coal reclamation activities and finding No. 5(c), section II, A(1)(h), concerning reports;

(6) finding No. 6(b), section II, B(1)(f), concerning the need for activities or construction of specific public facilities related to the coal or mineral industry on Tribal lands impacted by coal or mineral development and finding No. 6(c), section II, G, concerning reports;

(7) finding No. 7(b), section IV, A(2)(a)(i) concerning appraisals; and

(8) finding No. 8, section VI, C, concerning entry for emergency reclamation.

With the requirement that the Hopi Tribe further revise its plan provisions, the Director approves, as discussed in:

(1) finding No. 5(b), section II, A(1), concerning the abatement of any new coal problems that arise after the effective date of the certification of completion of coal reclamation;

(2) finding No. 7(a), section IV, A(1), concerning the acquisition of lands by the Hopi Tribe; and

(3) finding No. 7(c), section IV, B(1), concerning management of acquired lands.

The Director approves the plan provisions as proposed by the Hopi Tribe with the provision that they be fully promulgated in identical form to the plan provisions submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 756.17, codifying decisions concerning the Hopi Tribe plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the Tribe plan amendment process and to encourage Tribes to bring their plans into conformity with the Federal standards without undue delay. Consistency of Tribe 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 Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (*30 U.S.C. 1231-1243*) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (*42 U.S.C. 4332*) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (*44 U.S.C. 3507 et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*). The Tribe or State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be

implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

LIST OF SUBJECTS IN 30 CFR PART 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: April 16, 1996.

Russell F. Price, Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756--"INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS"

1. The authority citation for Part 756 continues to read as follows:

Authority: *30 U.S.C. 1201* et seq. and Pub. L. 100-71.

2. Section 756.17 is revised to read as follows:

SECTION 756.17 -- APPROVAL OF THE HOPI TRIBE'S ABANDONED MINE LAND RECLAMATION PLAN AMENDMENTS.

The following amendments to the Hopi Tribe's abandoned mine land reclamation plan are approved.

(a) The Hopi Tribe certification of completion of coal reclamation, as submitted on February 2, 1994, is approved effective June 9, 1994.

(b) With the exceptions of Part I, concerning the purpose of the Hopi tribe plan; section I, A(3) concerning facilities related to water supplies; section I, A(4), concerning public facilities projects; section II, B(1)(d)(ii), concerning the protection of property; and section 884.13(f)(2), concerning a description of aesthetic, cultural and recreational conditions of the Hopi Reservation, revisions to and additions of the following plan provisions, as submitted to OSM on November 2, 1995, are approved effective April 23, 1996.

Table of Contents-Title of Part II and List of Appendices;

List of Addenda and Errata-Title for this part;

List of Figures-Title of Figure 4 and deletion of Figure 5;

Preface to Amended Reclamation Plan-Introductory paragraph, program goals and objectives, and eligible projects;

Chairman's Letter of Designation and Hopi Tribe Resolution-Designation of Tribal agency authorized to administer approved plan;

Opinion of Legal Counsel-Authority of designated agency to conduct the AMLR program in accordance with the requirements of Title IV of SMCRA;

Section I, A(1)-Protection of the health, safety, and general welfare of members of the Hopi Tribe;

Section I, A(2)-Restoration of land and water resources;

Section I, B-Designation of administrative authority;

Section I, C-Reclamation priorities;

Sections I, C (4) and (5)-Deletion of existing C(4) and recodification of C(5) and (6) as C(4) and (5);

Section I, C-Deletion of allocation of funds provisions;

Section II, A-[Lack of] Limited liability provision for coal;

Section II, A(1)-Abatement of any new coal problems that arise after the effective date of the certification of completion of coal reclamation;

Sections II, A(1) (a) through (f)-Eligible coal lands and water;

Section II, (A)(1)(g)-Contractor responsibility;

Section II, A(1)(h)-Reports;

Sections II, B(1) (a) and (b)-Eligible lands and water subsequent to certification;

Sections II, B(1)(c), (d) (i) and (iii), (e), and (g)-Reclamation priorities for noncoal program;

Section II, B(1)(f)-Need for activities or construction of specific public facilities related to the coal or mineral industry on Tribal lands impacted by coal or mineral development;

Section II, G-Reports;

Sections II, C through F-Exclusion of certain noncoal reclamation sites, noncoal land acquisition authority, limited liability, and contractor responsibility;

Section II, H and [deletion of] ranking and selection of noncoal reclamation projects and Table I, Comprehensive/Problem Evaluation Matrix-Description of needs, proposed construction and activities;

Part III-Coordination of Tribal AML programs with other programs;

Section IV, A(1)-Acquisition of lands by the Hopi Tribe;

Section IV, A(2)(a)(i)-Appraisals;

Section IV, A(2)(b)-Lands eligible for acquisition;

Sections IV, A(2) (c), (d), (e), B(2), and C-Land acquisition, management, and disposal;

Section IV, B(1)-Management of acquired lands;

Part V and Figures 1 and 2-Reclamation on private land;

Section VI, A, B, and C-Rights of entry;

Deletion of section VI, C-Entry for emergency reclamation;

Part VII-Hopi Department of Natural Resources (DNR) policy on public participation;

Part VIII and Figure 4-Organization of the Hopi Tribe;

Part IX-Personnel staffing policies;

Part X-Purchasing and procurement;

Part XI-Management accounting;

[Deletion of] sections 884.13(e) (1), (2), and (3)-Purpose of Hopi Tribe plan and criteria for ranking and identifying projects;

Part XII-Economic conditions of the Hopi Reservation;

Part XIII-Flora and fauna;

Appendices 1 through 12-Addition of cover pages;

Appendix 1-Constitution and By-Laws of the Hopi Tribe, as amended;

Appendix 7-Title of the appendix;

Memorandum from the Assistant General Counsel/Legislation Counsel to DNR dated May 18, 1995-Elimination of Title IV from the draft Hopi Code Mining Ordinance;

Hopi Tribal Council Resolution H-134-89, adopted August 29, 1989; and

Memorandum from the Hopi Tribe Office of Financial Management to DNR dated September 7, 1995-Purchasing procedures.

3. Section 756.18 is amended by adding paragraphs (a) through (h) to read as follows:

SECTION 756.18 -- REQUIRED AMENDMENTS TO THE HOPI TRIBE'S ABANDONED MINE LAND RECLAMATION PLAN.

* * * * *

(a) By June 24, 1996, the Hopi Tribe shall revise the introductory paragraph at Part I, or otherwise revise the purpose of the Hopi Tribe plan, to provide separate and distinct provisions for coal and noncoal reclamation activities to be consistent with sections 403 and 411 of SMCRA and in compliance with the Federal regulations at 30 CFR Parts 874 and 875 in order to properly reflect the objectives and priorities for expenditures of monies from the abandoned mine land fund.

(b) By June 24, 1996, the Hopi Tribe shall delete section I, A(3) and recodify any subsequent paragraphs accordingly, or otherwise revise the Hopi Tribe plan, to provide appropriate provisions subsequent to the certification of completion of coal reclamation.

(c) By June 24, 1996, the Hopi Tribe shall revise Section I, A(4), or otherwise revise the Hopi Tribe plan, to require the same objectives and priorities concerning public facilities as set forth at section 411(e) of SMCRA.

(d) By June 24, 1996, the Hopi Tribe shall revise Section II, A(1), or otherwise revise the Hopi Tribe plan, to require that any coal reclamation activities subsequent to certification of completion of coal reclamation are subject to the provisions of sections 401 through 410 of SMCRA.

(e) By June 24, 1996, the Hopi Tribe shall revise Section II, B(1)(d)(ii) by deleting the word "property" for priority 2 noncoal reclamation, or otherwise revise the Hopi Tribe plan to provide for the protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices.

(f) By June 24, 1996, the Hopi Tribe shall revise Section IV, A(1) by deleting the word "coal" from the phrase "coal refuse thereon," or otherwise revise the Hopi Tribe plan to ensure that lands eligible for acquisition include those on which refuse from both coal and noncoal mining practices are located.

(g) By June 24, 1996, the Hopi Tribe shall revise Section IV, B(1) by reinstating the phrase "may be used, pending."

(h) By June 24, 1996, the Hopi Tribe shall revise the Hopi Tribe plan by reinstating Section 884.13(f)(2), or otherwise modify its plan to include information concerning significant esthetic, historic or cultural, and recreational values.

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