

FEDERAL REGISTER: 62 FR 18269 (April 15, 1997)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 756

Navajo Nation Abandoned Mine Land Reclamation Plan

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Navajo Nation abandoned mine land reclamation (AMLR) plan (hereinafter, the "Navajo Nation plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Navajo Nation proposed revisions to, additions of, or deletions of rules pertaining to project selection, limited liability, contractor responsibility, reports, certification of completion of coal sites, and utilities and other facilities. The amendment revised the Navajo Nation plan to meet the requirements of the corresponding Federal regulations, to incorporate the additional flexibility afforded by the revised Federal regulations, and to improve operational efficiency.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248-5070, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND ON THE NAVAJO NATION PLAN

On May 16, 1988, the Secretary of the Interior approved the Navajo Nation plan. General background information on the Navajo Nation plan, including the Secretary's findings and the disposition of comments, can be found in the May 16, 1988, Federal Register (53 FR 17186). Subsequent actions concerning the Navajo Nation's plan and plan amendments can be found at 30 CFR 756.14.

II. PROPOSED AMENDMENT

By letter dated September 3, 1996, the Navajo Nation submitted a proposed amendment to its plan (administrative record No. NA-245) pursuant to SMCRA (30 U.S.C. 1201 et seq.). The Navajo Nation submitted the proposed amendment at its own initiative and in response to a September 26, 1994, letter (administrative record No. NA-228) that OSM sent to the Navajo Nation in accordance with 30 CFR 884.15(b). The provisions of the Rules of the Navajo Reclamation Plan that the Navajo Nation proposed to revise, add, or delete were: policies and procedures for the Navajo Reclamation Program, section II, E, 1, project selection; general reclamation requirements for coal reclamation, sections II, L, 1(e), (g), (h), (i), and (j), eligible coal lands and water, limited liability, contractor responsibility, and reports; general reclamation requirements for noncoal reclamation, sections II, L, 2(b)(3) and (4), (c), (d), and (e), eligible noncoal lands and water, limited liability, contractor responsibility, and reports; sections II, M, 1(b), (d), 2, and 2(a) and (b), certification of completion of coal sites; sections II, N, 1 and 1(c), eligible lands and water subsequent to certification; sections II, P, 1, 1(a) through (c), 2, 2(a) through (f), and 3, utilities and other facilities; and administrative and management structure, sections III, E, 1 and 1(a), future reclamation set-aside program.

OSM announced receipt of the proposed amendment in the September 30, 1996, Federal Register (61 FR 51070), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NA-249). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 30, 1996.

III. DIRECTOR'S FINDINGS

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendment submitted by the Navajo Nation on September 3, 1996, meets the requirements of the corresponding Federal regulations. Thus, the Director approves the proposed amendment.

1. NONSUBSTANTIVE REVISIONS TO THE NAVAJO NATION'S RULES

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

Section II, L, 1(e) and (g), (30 CFR 874.12(e) and (g)), eligible coal lands and water;

Section II, L, 2(b)(3) and (4), (30 CFR 875.12(c) and (d)), eligible noncoal lands and water prior to certification;

Section II, M, 1(b) and 2, (30 CFR 875.13(a)(2) and (c)), certification of completion of coal sites;

Section II, N, 1 and 1(c), (30 CFR 875.14(a) and (b)), eligible lands and water subsequent to certification; and

Section III, E, 1 and 1(a), (30 CFR 873.1, 873.11, and 873.12(a)), future reclamation set-aside program.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that they meet the requirements of the Federal regulations. The Director approves the proposed revisions to these rules.

2. SUBSTANTIVE REVISIONS TO THE NAVAJO NATION'S RULES THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING PROVISIONS OF THE FEDERAL REGULATIONS

The Navajo Nation proposed the addition of the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses):

Section II, L, 1(h), (30 CFR 874.15), limited liability;

Section II, L, 1(i), (30 CFR 874.16), contractor responsibility;

Section II, L, 1(j), (30 CFR 886.23), reports;

Section II, L, 2(c), (30 CFR 875.19), limited liability;

Section II, L, 2(d), (30 CFR 875.20), contractor responsibility; and

Section II, L, 2(e), (30 CFR 886.23), reports.

Because these proposed added Navajo Nation rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they meet the requirements of the Federal regulations. The Director approves the proposed addition of these rules.

3. SECTION II, E, 1, PROJECT SELECTION

The Navajo Nation proposed new language in its rule at section II, E, 1 to provide the following.

Reclamation techniques for the specified noncoal mine closure and radioactive mine wastes will ensure compliance with the in-house Health Physics Standards and Guidelines in the absence of any Tribal or Federal clean up standards specific to abandoned mine lands. The mine wastes contain low level radioactivity, but the levels are such that the reclamation work can be safely conducted if the health and safety standards are strictly followed. Departmental verification of the clean up standards will be performed at each disturbed area(s).

There are no SMCRA or implementing Federal regulation requirements concerning reclamation standards or techniques for noncoal projects that must be followed or adhered to by State or Indian tribe AMLR programs. The Director finds that the proposed rule at section II, E, 1, which requires reclamation techniques for noncoal mine closures and radioactive mine wastes that ensure compliance with specific Navajo health and safety standards for clean-up of such sites, provides an

additional safeguard for human safety that is not inconsistent with the Federal noncoal reclamation regulations at 30 CFR part 875. Therefore, the Director approves the proposed addition of this rule.

4. SECTIONS II, M, 1(D) AND 2(A) AND (B), AND P, 1(A) THROUGH (C), 2(A) THROUGH (F), AND 3, UTILITIES AND OTHER FACILITIES

SECTIONS II, M, 1(d)

The Navajo Nation proposed to delete its rule at section II, M, 1(d), which required a description of the Navajo Nation's ability to fund all potential coal-related problems that occur during the life of the AMLR program after the Navajo Nation's certification of completion of coal reclamation. There is no direct counterpart in the Federal regulations, but 30 CFR 875.13(a)(3) has similar requirements. It requires a State or Indian tribe to agree to acknowledge and give top priority to any coal-related problem that may be found or occur during the life of the approved AMLR program after the State's or Indian tribe's certification of completion of coal reclamation. Such agreement is provided in the Navajo Nation's rules at section II, N, 1(c), which requires that, if eligible coal problems occur after certification, the Navajo Nation will address such coal problems in the next grant cycle. Because the rule at section II, N, 1(c) provides for coal reclamation after certification, as required by 30 CFR 875.13(a)(3), and because the deleted rule at section II, M, 1(d) has no direct counterpart in the Federal regulations, the Director finds that deletion of the rule at II, M, 1(d) rule is not inconsistent with the Federal regulations at 30 CFR part 875. Therefore, the Director approves the proposed deletion.

SECTIONS II, M, 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f)

The Navajo Nation proposed to revise its noncoal reclamation rules by deleting the introductory sentence for section II, M, 2(a) and deleting in its entirety section II, M, 2(b). The introductory sentence for section 2(a) indicates that this section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities; and the construction of public facilities in communities impacted by coal and other mineral mining and processing practices. Section 2(b) states that, where the Navajo Nation President determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry, the provisions of Part O (should be "P") of the Navajo plan, entitled Utilities and Other Facilities, apply. The Navajo Nation also proposed to delete the requirements provided by its rules at sections II, P, 1(a) through (c) and 2(a) through (f), which set forth criteria and procedures for funding public utilities and other facilities projects.

The Federal regulatory counterparts to the deleted rules at sections II, M, 2(a) and (b) are at 30 CFR 875.15(a) and (d). The counterparts to the deleted rules at sections II, P, 1(a) through (c) and 2(a) through (f) are in the Federal regulations at 30 CFR 875.15(c) and (e). All of these Federal regulations continue to allow States and Indian tribes to include in their AMLR plans provisions for the funding of public utilities and other facilities.

The effect of the Navajo Nation's proposed rule deletions is that the Navajo Nation no longer has rules that would allow it to apply for and receive AMLR funds for the construction of public utilities and other facilities. OSM does not determine for a State or Indian tribe that has an approved AMLR program how to allocate the limited AMLR funds each receives to carry out the purposes of title IV of SMCRA.

In addition, the proposed deletion of the Navajo Nation rules at section II, M, 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f) is consistent with the overall intent of the Navajo Nation to direct its AMLR funds to specific noncoal reclamation projects and to not use these funds for public utilities and other facilities. As provided at section 405(d) of SMCRA, approval of the Navajo Nation plan granted to the Navajo Nation exclusive responsibility and authority to implement the provisions of its approved program. The approval carries with it the responsibility to administer the AMLR program in an efficient manner and to carefully consider all expenditures, including determining which reclamation projects will receive AMLR funding. The approval of the AMLR program means the Navajo Nation can spend its AMLR funds on reclamation projects of its own choosing so long as the program continues to be in compliance with the procedures, guidelines, and requirements established under subsection 405(a) of SMCRA.

For these reasons, the Director finds that the deletion of the Navajo Nation rules at sections II, M, 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f) is not inconsistent with the Federal requirements at 30 CFR 875.15(a), (c), (d), and (e). Therefore, the Director approves the proposed deletion of these rules.

SECTION II, P, 3

The Navajo Nation proposed to delete its rule at section II, P, 3, which provides for (1) preparation of a news release concerning the grant application for funding of public utilities and other facilities and providing an opportunity for public comment, (2) evaluation of public comments, and (3) a determination that the funding meets the requirements of the Navajo Nation rules and is in the best interest of the Navajo Nation. There is no direct Federal regulation counterpart to section II, P, 3, but the requirements of 30 CFR 875.15(e) generally are counterparts to the deleted provisions. The deletion of this Navajo Nation rule is consistent with the Navajo Nation's deletion of all rules concerning public utilities and other facilities.

For this reason and for the reasons discussed in the preceding findings for sections II, M, 1(d), 2(a) and (b) and P, 1(a) through (c) and 2(a) through (f), the Director finds that the deletion of section II, P, 3 is not inconsistent with the Federal regulations at 30 CFR 875.15. The Director approves the proposed deletion of this rule.

IV. SUMMARY AND DISPOSITION OF COMMENTS

As discussed below, OSM did not receive any comments on the proposed amendment.

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 Navajo Nation plan (administrative record Nos. NA-246 and 248). No comments were received from any Federal agencies.

V. DIRECTOR'S DECISION

Based on the above findings, the Director approves the Navajo Nation's proposed plan amendment as submitted on September 3, 1996.

The Director approves, as discussed in: finding No. 1, section II, L, 1(e) and (g), concerning eligible coal lands and water, section II, L, 2(b)(3) and (4), concerning eligible noncoal lands and water prior to certification, section II, M, 1(b) and 2, concerning certification of completion of coal sites, section II, N, 1 and 1(c), concerning eligible lands and water subsequent to certification, and section III, E, 1 and 1(a), concerning future reclamation set-aside program; finding No. 2, section II, L, 1(h), concerning limited liability, section II, L, 1(i), concerning contractor responsibility, section II, L, 1(j), concerning reports, section II, L, 2(c), concerning limited liability, section II, L, 2(d), concerning contractor responsibility, and section II, L 2(e), concerning reports; finding No. 3, section II, E, 1, concerning project selection; and finding No. 4, deletion of section II, M, 1(d), concerning certification of completion of coal sites, deletion of sections II, M, (2)(a) and (b) and P, 1(a), (b), and (c), (2)(a) through (f), and (3), concerning utilities and other facilities.

The Director approves the rules as proposed by the Navajo Nation with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 756, codifying decisions concerning the Navajo Nation 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 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or private sector.

LIST OF SUBJECTS IN 30 CFR PART 756

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

Dated: March 24, 1997.

James F. Fulton, 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 756.14 is amended by adding paragraph (d) to read as follows:

SECTION 756.14 -- APPROVAL OF AMENDMENTS TO THE NAVAJO NATION'S ABANDONED MINE LAND PLAN.

* * * * *

(d) Revisions to, additions of, or deletions of the following rules, as submitted to OSM on September 3, 1996, are approved effective April 15, 1997.

Section II, E, 1, Project selection,

Sections II, L, 1(e) and (g), Eligible coal lands and water,
Section II, L, 1(h), Limited liability,
Section II, L, 1(i), Contractor responsibility,
Section II, L, 1(j), Reports,
Sections II, L, 2(b)(3) and (4), Eligible noncoal lands and water prior to certification,
Section II, L, 2(c), Limited liability,
Section II, L, 2(d), Contractor responsibility,
Section II, L, 2(e), Reports,
Sections II, M, 1(b) and (d), 2, and 2(a) and (b), Certification of completion of coal sites,
Sections II, N, 1 and 1(c), Eligible lands and water subsequent to certification,
Sections II, P, 1(a) through (c), 2(a) through (f), and (3), Utilities and other facilities, and
Section III, E, 1 and 1(a), Future reclamation set-aside program.

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