

FEDERAL REGISTER: 43 FR 49932 (October 25, 1978)

DEPARTMENT OF THE INTERIOR

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

30 CFR Subchapter R (Parts 870, 872, 874, 877, 879, 882, 884, 886, and 888)

Abandoned Mine Land Reclamation Abandoned Mine Land Reclamation Program Provisions; Procedures and Requirements

ACTION: Final rules.

SUMMARY: The regulations added to this chapter by these Parts established the abandoned mine land reclamation program as required by the Surface Mining Control and Reclamation Act of 1977 (Act). The Act requires that regulations be promulgated for the abandoned mine land reclamation program, which incorporates the provisions of Title IV of the Act. The regulations establish procedures and requirements for the preparation, submission and approval of State and Indian programs, consisting of a plan and annual submissions of projects.

EFFECTIVE DATE: October 25, 1978, except for public record and report requirements which are subject to General Accounting Office approval and will be effective 45 days following publication (December 11, 1978), unless the General Accounting Office notifies that it does not approve those requirements.

ADDRESSES: Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, 202-343-4006.

FOR FURTHER INFORMATION CONTACT: Richard Nalbandian, 202-343-4057.

SUPPLEMENTARY INFORMATION: Proposed rules were published in the FEDERAL REGISTER on April 26, 1978 (43 FR 17918) as 30 CFR Parts 840, 841, 843, 845, 848, 850, 852, and 855. In order to consolidate the rules for ease of reference and use, the Office of Surface Mining has been assigned a block of numbers to accommodate all the rules of the Office. The table below is provided to assist the public in comparing the proposed and final rules for Abandoned Mine Land Reclamation.

Final Rules Part 870

Proposed Rules Part 837 (Final 12/13/77)

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Final Rules	Proposed Rules
Part 872	Part 840
Part 874	Part 841
Part 877	Part 843
Part 879	Part 845
Part 882	Part 848
Part 884	Part 850
Part 886	Part 852
Part 888	Part 855

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The Surface Mining Control and Reclamation Act of 1977 (Act), Pub. L. 95-87, requires the Secretary of the Interior to publish regulations implementing and abandoned mine land reclamation program incorporating the provisions of Title IV of the Act. The regulations establish procedures and requirements for the preparation of State and Indian programs, consisting of a Reclamation Plan, annual submissions of projects and applications for annual grants. The additional parts to this chapter also include implementation of the Federal, State, and Indian Abandoned

Mine Reclamation Funds; general reclamation objectives and requirements; conditions and procedures for entry on land study, exploration, reclamation and emergency reclamation work; requirements for acquisition, management and disposition of eligible land and water; authorization for reclamation on private land; and establishment of interim procedures for Indian reclamation projects.

These regulations are established pursuant to the authority of sections 201(c) and 412(a) of the Act, 91 Stat. 449, 466 (30 U.S.C. 1211, 1242). It should be noted that the regulations implementing the provisions of Title IV relating to the amount and collection of reclamation fees have already been promulgated in 30 CFR Part 837 on December 13, 1977 (42 FR 62713). In conformance with the new numbering system they are redesignated Part 870. A brief discussion of the parts and major sections of the final regulations follows.

Part 872 sets forth general responsibilities for administration of abandoned mine reclamation funds to finance the program. It defines the source and use of moneys deposited in the Funds and the responsibilities of Federal and State agencies and Indian tribes in the conduct of the programs.

Part 874 establishes requirements for the selection of work to be performed with moneys from the applicable Fund. It includes land and water eligibility requirements, reclamation project objectives, and project evaluation factors.

Part 877 sets forth procedures for entry on land by the Office, a State or Indian tribe under an approved Reclamation Plan to conduct studies or exploratory work to determine the existence of adverse effects of past coal mining practices, or to perform necessary reclamation work.

Part 879 contains procedures for the acquisition, management, and disposition of eligible land and water by the Office or a State or Indian tribe under an approved Reclamation Plan. This part also provides requirements for the collection and disposition of charges from the use or sale of acquired lands.

Part 882 authorized reclamation activity on private land after the procedures under Part 877 have been met. Sections 882.12-14 establish procedures for the recovery of the cost of reclamation on privately-owned land.

Part 884 establishes requirements and procedures for the preparation, submission and approval of State Reclamation Plans. Sections 884.15 and 16 contain provisions for amendments to State Plans or withdrawal or Plan approval.

Part 886 sets forth procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible land and water and for other activities necessary to carry out the Plan as approved. This part also contains provisions for the reduction or termination of grants under certain circumstances and requirements for the administration of the grants.

Part 888 establishes interim procedures for conducting reclamation activities on Indian land in recognition of the unique status of Indian tribes under Title IV as a result of section 710 of the Act. This part is included to provide a method for beginning reclamation of Indian lands which are determined to be emergency or extreme danger situations or are at otherwise high priority for reclamation activities.

**CONCURRENCES:** The reporting requirements contained in these regulations require General Accounting Office review prior to their implementation.

#### **BACKGROUND:**

The Surface Mining Control and Reclamation Act of 1977 was signed into law on August 3, 1977. Proposed rules implementing Title IV of the Act were published in the FEDERAL REGISTER on April 26, 1978 (43 FR 17918). Public hearings on the proposed rules were held on May 22, 1978, in Denver, Colo., May 25, 1978, in St. Louis, Mo., and June 1, 1978, in Washington, D.C. At the close of the comment period on June 26, 1978, 28 commenters had responded. The transcripts of the public hearings, and all written comments have been considered in the development of these final regulations.

Comments pertaining to each Part of this chapter have been summarized and are stated below, including explanations of all the significant changes that have been made between the Proposed Rules and these Final Rules. In this way it is hoped that the public will more readily understand the response to each comment and will, therefore, have a better understanding of the bases and purposes of the final regulations.

## PART 872 -- ABANDONED MINE RECLAMATION FUNDS

Part 872 sets forth general responsibilities for administration of State and Indian Reclamation Programs, the Rural Lands Reclamation Program and reclamation activities to be carried out by the Office of Surface Mining Reclamation and Enforcement (Office). It provides definition of terms used in the Abandoned Mine Land Reclamation Programs. It also states the sources of revenue and authorized uses for Federal, State, and Indian Abandoned Mine Reclamation Funds.

1. Three comments were received in regard to coordination between State and Federal Program efforts suggesting rewording to emphasize the need for coordination among programs conducted with moneys from the Fund.

Response: The Office is in full agreement with the importance of close coordination between the programs. The Office has, therefore reworded Sec. 872.4(b) (4) and (5) for clarification of Federal responsibilities and added Sec. 872.4(c)(7) to emphasize the States coordination responsibilities under the Act.

2. Four comments were received concerning the definition of "Emergency" and "Extreme Danger." Most of the concern centered around the use of the word "considerable" in both definitions which was considered to be too arbitrary and left too much to conjecture.

Response: We concur in the commenters concerns and have made the changes necessary for clarification in accordance with the Act.

To reflect the unpredictable nature of an emergency, Sec. 872.5(c) is changed to read "Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, and welfare of people before the danger can be abated under normal program operation procedures".

The word "considerable" in Sec. 872.5(e) was changed to "substantial" as it was in (c) above because: The word "substantial" was used in the Act in the definition of "Imminent danger"; and because Blacks dictionary defines "considerable" as worthy of consideration -- and being merely relative -- whereas "substantial" is defined as something of real worth and importance -- something worthwhile as distinguished from something without value or merely nominal.

3. Three commenters expressed concern over the definition of "expended," proposing that it be modified by adding the words "or obligated."

Response: In our view such a modification would dilute "expend" as used in section 402(g)(2) of the Act to an almost meaningless term. Experience has shown that such latitude promotes hasty last minute obligations rather than well planned programs efforts. The commonly accepted definition of "expend" is to pay out or distribute. Blacks law dictionary definition is "to pay out, use up, consume" and implies receiving something in return; whereas "obligate" is to bind or constrain. No change has been made.

4. Numerous comments were made proposing that funds be made available for the preparation of State Reclamation Plans.

Response: After a careful in depth review of sections 102 (g) and (h), 401(c), and 412(b) of the Act, we have concluded that funds may be made available for some specific elements of the planning phase. We have, therefore, modified the regulations by adding Sec. 872.11(b)(5)(vi) to allow the Office to enter into a cooperative agreement with a State or Indian tribe to gather the data required to assemble a State or Indian plan as specified in Sec.

884.13(f). This may be done only at the request of the Governor or Indian tribe and only with those funds allocated or available for allocation to the State or Indian tribe.

5. One comment was received regarding fees collected from Indian reservations and suggesting that use of such fees exclusively on the reservation seriously impairs the availability of funds to States that are dominated by reservations.

Response: For purposes of Title IV of the Act (sec. 405(k)) Indian tribes have the same status as States, subject to the limitations of section 710 of the Act and Part 888 of this subchapter. Funds collected from reservations are subject to the same procedures -- allocations, grants to and withdrawals from the tribes -- that are applicable to funds collected from States. However, because Title IV explicitly provides for the allocation of moneys collected on coal producing lands in which an Indian tribe has an interest, the Office must make the necessary allocation.

In this regard, it should be noted that the Office has deleted all references to the term "Indian reservation" in Sec. 872.11 and replaced it with the term "Indian lands." This change was made as a result of a memorandum from the Associate Solicitor, Division of Indian Affairs in the Solicitor's Office which concluded that the legislative history required such a change. The change made is also more consistent with other provisions of the Act and provides the Office with a more identifiable geographical area upon which to base its allocations. No other change was made.

6. Four commenters suggested that work done by the Director on noncoal projects should be done at the request of the Governor of a State, since the work will be done using moneys allocated or available for allocation to States.

Response: That is the requirement in section 409(b) of the Act, the intent of the regulations and is covered under Sec. 874.12(b)(2). For clarification we have made the appropriate change in Sec. 872.11(d)(ii).

7. Twelve comments were directed to the withdrawal of State fund allocations and grants. They range from a suggestion for withdrawal after only 1 year to a suggestion for withdrawal after 3 years of only those funds that have not been obligated.

In addition, suggestions were made to assure expenditure of withdrawn allocations and grants in the States from which they were withdrawn. Suggestions were also made regarding rules for allocation of Federal expenditures.

Response: Section 402(g)(2) of the Act is quite clear in specifying that "if funds -- have not been expended within 3 years after their allocation, they shall be available to expenditure in any eligible area as determined by the Secretary." Considerable safeguards are included in the regulations to protect the States from automatic or indiscriminate withdrawals, i.e. Sec. 872.11(b)(2) provides that "allocations may be withdrawn" and requires a written finding of fact -- similarly Sec. 886.18(b) requires a written notice and an opportunity for consultation and remedial action before termination of a grant. Section 886.18(b) also provides for retention of any portion of a grant required to meet contractual commitments made prior to an effective termination date.

In conformance with the Act, the geographic allocation of Federal expenditures from the fund, including those withdrawn from State allocations and grants, will reflect both the area from which the revenue came and the national program needs. Information regarding such needs is being and will be collected from a wide variety of sources including reports from private citizens, States and the direct data collection efforts of the Office. It must also be emphasized that Federal expenditures are taken from the Abandoned Mine Reclamation Fund; therefore, all the provisions of Part 874, General Reclamation Requirements, apply equally to the Federal Reclamation Program. Projects carried out with the discretionary funds by the Office must also be carried out in accordance with the procedural requirements of Parts 872, 877, 879, and 882 of this subchapter. The regulations, as written, are considered adequate for allocation of "discretionary" funds.

8. One comment was received regarding the deletion of the word "demonstration" in Sec. 872.11(b)(5)(iii) and suggesting such deletion could change congressional intent.

Response: The word was inadvertently omitted in the proposed regulations. It has been added in the final

regulations, (iii) now reads "\* \* \*research, development, and demonstration projects," reflecting the common terminology in the scientific community.

9. Three suggestions were made suggesting that a provision be added to require withdrawal of funds transferred to the Secretary of Agriculture if not expended within 3 years.

Response. Under Federal budgeting procedures, funds will be transferred to Agriculture only in the amounts programmed for use during a specific budget cycle. Provisions for withdrawal of funds are not required in these regulations since normal Federal accounting and budgeting procedures will achieve essentially the same results the commenters desired.

10. One commenter suggested making all of a State's allocation available on the date that a State's plan is approved.

Response: Allocations are technically available in their entirety upon approval of a State plan. They are available for appropriation by the Congress pursuant to section 401(d) of the Act and annual project requests may be made pursuant to section 405(f) of the Act. Grant applications may be submitted pursuant to Sec. 886.15 of the regulations. We have requested appropriation of allocated funds for fiscal year 1979 based on our best estimate of the State plans and grant applications that will be submitted and approved during that period. If the number exceeds our expectations we are prepared to request supplemental appropriations to meet the need. This emphasizes the importance of the annual budget effort.

11. One commenter expressed concern that the application of OMB Circular A-102 in Sec. 872.12 to management of the State Funds would discourage States from placing their own money in the accounts.

Response: We agree that it might serve as a deterrent for depositing other State money in the fund. We have provided the State the option of depositing other money in the account for their administrative convenience if they so desire. We have no alternative for management of the Fund which is established pursuant to section 401(a) of the Act, and which requires management in accordance with approved Federal practice under OMB Circular A-102. No changes are necessary.

## PART 874 -- GENERAL RECLAMATION REQUIREMENTS

Part 874 sets forth requirements relating to eligibility, priorities, selection, and evaluation that are applicable to State, Indian and Rural Lands Reclamation Programs and reclamation activities to be carried out directly by the Office. Consideration was given to including in this part standards for reclamation project operations comparable to the environmental performance standards for current coal mining operations. Such standards are not included at this time because a more extensive review is required to define specific national standards which are appropriate for the disparate reclamation activities to be conducted. Comments on the nature and content of standards which should be developed were requested and there were eleven such responses which are addressed in comment 17 below.

1. One commenter asked why the Rural Lands Reclamation Programs was mentioned in Sec. 874.2, since proposed regulations for the program known as RAMP were published in the FEDERAL REGISTER in volume 43 at page 15312.

Response: No change to Sec. 874.2 is needed. As stated in Sec. 874.1, Scope, "This part establishes general requirements for the selection of work to be performed with moneys from the Abandoned Mine Reclamation Fund, \* \* \*." The Rural Lands Reclamation Program (Rural Abandoned Mine Program or RAMP, as it has been named by the Soil Conservation Service) receives moneys from the Fund and is, therefore, subject to certain common conditions for the use of moneys from the Fund. The inclusion of such common conditions are intended to insure coordination and uniform management of programs carried out with the Fund, and have been carefully coordinated with the Soil Conservation Service.

2. Although no comment was received addressing this change, Sec. 874.5 Definitions was added as a result of

changes made in this Part that made it necessary to define the phrase "left or abandoned in either an unreclaimed or inadequately reclaimed condition." The definition reflects the language found in the Congressional Record at H.R. Rept. No. 2, 95th Cong., 1st sess. 140(1977).

3. Nine commenters suggested that the language of Sec. 874.12 did not follow closely enough the wording of section 404 of the Act. In Sec. 874.12(a) they objected specifically to the deletion of the word "coal" from the eligibility requirements as stated in section 404 of the Act, apparently feeling that this indicated a de-emphasis of the priority assigned to coal mined lands by the Act. Several also felt that the connecting words used between Sec. 874.12(a)(1), (2) and (3) should also reflect the proper combinations of the requirements of the Act.

Response: The suggestions for insertion of the word "coal" in Sec. 874.12(a) were not accepted. Sec. 874.12(b) establishes eligibility requirements for reclamation of lands and water affected by past non-coal mining activities and incorporates the provisions of section 409 of the act. Sec. 874.12(b), when read with Sec. 874.12(a), establishes eligibility priorities consistent with both sections 404 and 409(c) of the act. Section 874.12(a) was, however, rewritten to reflect the proper combinations of the requirements of the act and to clarify the meaning of "continuing responsibility." Responsibility will be determined only by State Statutory law and will not include common law. In addition, the language was broadened to allow lands to remain eligible in the event a forfeited bond is insufficient to do an adequate job of reclamation. These changes reflect the best judgment of the Office regarding the intent of Congress gleaned from the act and the legislative history. The legislation did not specifically address the issues of common law responsibility or bond forfeiture and, as a result, the Office has made a judgment that will most likely result in accomplishing more reclamation activity than if lands subject to common law liability or under bond forfeitures had been excluded.

4. Three commenters suggested alternative or additional language for Sec. 874.12(c), seeking to eliminate what they perceived as ambiguity or to set more flexible criteria for determining eligibility of proposed reclamation projects by deleting the phrase "beneficial use of land or water resources" and substituting the phrase "approved post-mining land use."

Response: The suggestions were not accepted. The language in Sec. 874.12(c) was taken directly from section 102(h) of the act and provided sufficient latitude for selection of projects. However, the section has been moved in the final regulations and is now included in Sec. 874.5(b).

5. Eight commenters recommended that the word "coal" be inserted in Sec. Sec. 874.13 (a), (b), and (c) between the word "past" and the words "mining practices." They said that this is necessary to insure the observance of the priority to be given coal reclamation under the act. Two of these commenters further suggested that the word "coal" should be deleted from Sec. 874.13(d), again in order to follow more closely the wording of the act and the intent of Congress.

Response: Our efforts to combine coal and non-coal priorities were apparently difficult to understand. We have, therefore, accepted the recommendations to insert the word "coal", and have expanded the section to include the priorities established in section 409(a) and (c), and 402(g)(2) of the act, respectively for non-coal mined lands. The suggestion to delete the word "coal" from Sec. 874.13(d) was rejected because section 409(c) of the act sets forth a necessary action-oriented program which precludes "non-coal" from Sec. 874.13(d), (e) and (f) of the regulations. The changes are not substantive, but rather add language to clarify the intent of the rules.

6. One commenter recommended that development of land adversely affected by coal mining for housing of people who are disabled or dislocated as a result of coal mining be established as the sixth priority in Sec. 874.13.

Response: The recommendation was not accepted. The section follows the priorities specified in the act. Sec. 874.14(a)(3)(vi)(d) allows such benefits to be considered in evaluating proposed reclamation projects. Acquisition of land for housing is, in our view, dealt with by section 407(h) of the act as an authority rather than as a priority. We have treated it the same way in the regulations.

7. Two commenters asked for clarification of the exclusion of channelization under objective number three in

section 403 of the act and objective (c) in Sec. 874.13 of the regulations.

Response: No change to the regulation is needed. Section 403 of the act is constructed to permit channelization necessary to meet objectives 1, 2, 4, 5, and 6 in section 403 of the act (objectives a, b, d, e, f, and g in Sec. 874.13 of these regulations). That is, channelization is permitted in all cases except under section 403(3) and Sec. 874.13(c), where it is specifically excluded by the act.

8. One comment noted that the notification and review requirements of OMB Circular A-95 are not addressed by the regulations.

Response: Section 886.15(a) has been rewritten to insure fulfillment of OMB Circular A-95 notification and review requirements. Such notification and review is required by Part 1 of the Circular itself. Furthermore, State and regional review insuring coordination of planning and implementation of projects involving public monies is simply a fundamental sound planning practice.

9. One commenter noted that Sec. 874.14 does not recognize the unique requirements of section 406 of the act and the need for assurances on the consistency of the Rural Abandoned Mine Program with these regulations.

Response: As stated in section 874.2, the objectives of this Part are to establish conditions common to all programs. Likewise, Sec. 874.11 specifies that the provisions of this Part apply to all projects. RAMP is included by reference because its funding comes from the Fund. Additional reference in Sec. 874.14 is not necessary.

10. One commenter suggested adding an evaluation factor to Sec. 874.14(a)(3) that specifically would consider erosion control and sediment reduction.

Response: The words "abatement of erosion and sedimentation," have been added to Sec. 874.14(a)(3)(ii). This is justified since exacerbation of erosion and sedimentation is one of the major and most common environmental problems associated with abandoned mine lands. (See "Environmental Impact Statement, Rural Abandoned Mine Program," Soil Conservation Service, July 3, 1978, pp. 16, 18, 32, 36.)

11. One commenter suggested that Sec. 874.14(a)(8) should emphasize that maintenance of the reclaimed area and post-reclamation management are essential factors upon which an evaluation should be based. which an evaluation should be based.

Response: The word "maintenance" has been added. It is obvious that maintenance will often be necessary to successful reclamation, e.g., irrigation may be required until self-supporting vegetation is established, or periodic dredging of a sedimentation pond or impoundment may be needed to insure adequate storage capacity.

12. One commenter suggested the addition of two new evaluation factors in subpart 874.14; one related to hazards that may be created by sealing abandoned underground openings adjacent to active mines and a second related to the need for local, State, Indian and Federal coordination where mines lie near or across jurisdictional boundaries.

Response: The first evaluation factor suggested was provided for by adding the words "or after" in Sec. 874.14(a)(4). This gives sufficient latitude to consider such potential hazards. The second comment was not accepted, since such intergovernmental coordination is already considered in Part 872 of this subchapter.

13. One commenter felt that in Sec. 874.14(a)(5) "costs of reclamation" and "economy and efficiency" were given too little consideration and suggested that more emphasis should be given to these criteria.

Response: The comment was not accepted. The commenter apparently believed that the evaluation factors are listed in order of weight or value assigned. This is not so. No values or priorities have yet been assigned to the factors. But in any case, it must be emphasized that Pub. L. 95-87 is an environmental act. Hazards to people and the environment are the overriding concerns rather than cost-benefit considerations.

14. One commenter asked the meaning of "future" in Sec. 874.14(a)(6)(i) and of "special consideration" in Sec. 874.14(a)(6)(ii). Further, he asked what actions a State may take if no one has indicated an interest in resource recovery despite the presence of a major resource in a refuse site.

Response: The Office or State has flexibility in determining "future" as any time subsequent to the present. "Special consideration" means that the Office or State should carefully examine the site proposed for reclamation to determine if it is likely to be remined in the near future, thereby negating the proposed reclamation work. The Office and the State have an obligation to insure for as long as possible the benefits derived from reclamation. Finally, the Office or State may recover the coal itself in the course of reclamation, or may otherwise reclaim the site if it so desires and if the project fulfills the other selection criteria.

15. One commenter suggested addition of the words "if economical to recover the resource" to Sec. 874.14(a)(6)(ii).

Response: The comment was not accepted. The regulation simply requires consideration of the resource as one of the evaluation factors, not recovery of it. Sufficient latitude is given by the regulation to allow the recoverable coal resource either to be recovered as a part of the reclamation effort or foregone if necessary.

Finally, as a result of consultation with the U.S. Fish and Wildlife Service, Sec. 874.14(a)(3)(ii) was changed to read "-- quality, fish (and), wildlife, and plant habitat \* \* \*" in order to be in accord with the requirements of the Endangered Species Act of 1973.

16. Eleven comments were received concerning the application of specific standards to reclamation work on abandoned mine lands. The comments ranged from proposing specific standards or areas for consideration to challenging the authority of the Office to promulgate such standards under Title IV.

Response: Each of the comments will be carefully considered in the development of reclamation standards for abandoned mine lands. Additional public comment and discussion will be invited and considered during the subsequent rulemaking. Proposed rules will be published, a formal comment period will be provided, and final regulations will be promulgated. A tentative schedule for this rulemaking will be published in the near future. However, until such rules are promulgated, the specific requirements for reclamation work will be considered on a case-by-case basis. The Office believes this will be an acceptable practice because the reclamation work done during this period will generally address only emergency or extreme danger situations.

However, the comment challenging the authority of the Office to establish standards does deserve a response at this time. Sections 201(c) and 412(a) of the act provide ample authority to promulgate necessary regulations for the implementation of the act. Furthermore, section 405 places an obligation on the Office to monitor the progress and quality of State reclamation programs. It is self-evident that in authorizing, funding, evaluating, or directly undertaking work under Title IV, the Office must establish certain minimum standards for the quality and acceptability of the work and upon which it may make a judgment about the progress and quality of work performed. Obviously, the Office must be able to judge whether the objectives in section 403 of the act are indeed being fulfilled.

## PART 877 -- RIGHTS OF ENTRY

Part 877 establishes procedures for entry on private lands for purposes of study or exploratory work, and reclamation. The rules state a policy preference for entry under a written consent from the owner rather than under the police powers provided in sections 407(a) and (b) and 410(b) of the act. When advance consent cannot be obtained, entry for study or exploration and reclamation is limited to those cases, or discovering those cases, where there is reason to believe that the adverse effects of past coal mining may be harmful to the public health, safety or general welfare. Notice requirements and procedures for certain written findings are proposed for those cases when consent cannot be obtained.

1. There were 22 comments concerning the right of entry. Most of these comments related to Sec. 877.11

concerning the legal description of the land. Most commenters were under the impression that a legal description would entail getting a metes and bounds description by a survey of the property. Others wanted to have only oral consent or just a handshake agreement to enter upon the property.

Response: We did not accept the suggestions for adoption of an oral consent or deletion of the legal description. It is extremely important to establish ownership and the specific nature of any agreement, in order to determine such things as land eligibility and lien requirements. The requirement for a legal description can be satisfied by using the description found in the county land records, tax maps or abstract of title, without employing the metes and bound method.

2. One commenter expressed the need for protection of the landowner from reclamation efforts that result in more hazardous conditions, and Federal responsibility for after-effects of emergency reclamation.

Response: Under the Anti-Deficiency Act, 31 U.S.C. 665, et seq, the Federal Government is prohibited from entering into agreements to indemnify or hold harmless any landowner receiving assistance. The Office is, therefore, prohibited from making rules to provide for such indemnification. The Office intends, however, that all work will be performed according to the highest professional standards and approved work plans.

3. Under Sec. 877.14 a number of commenter suggested that we add the word "state" after the word "Office".

Response: This section addresses provisions for emergency situations. Section 410 of the act only authorizes the Secretary to do emergency reclamation work. Moreover, section 405(d) specifically excludes States from engaging in emergency reclamation work under section 410. Therefore, the Office cannot accept this comment.

## PART 879 -- ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

Part 879 reflects several provisions of Title IV of the Act for acquisition, use and disposal of land and water. For the convenience of the public, the following table reflects the primary authority in the Act for selected provisions of this part.

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Section of proposed rules	Section of the Act
879.11(a)	407(c)(1) and (2) and 407(f)
879.11(b)	407(c)(3) and 407(f)
879.11(c)	407(h)
879.11(d)	409(e)
879.12(c)	407(c)
879.12(d), (e), and (f)	407(d)
879.13	407(c) and 409(e)
879.14	407(f)
879.15	407(g)(2)
879.15(b) and (c)	412(b)(2)
879.15(d) and (e)	407(e)
879.15(f)	407(h)
879.15(g)	407(g)(i)

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Sections of the regulations not specifically identified in the above table, as well as some portions of the sections identified, are promulgated under section 412(a) of the Act, which allows the Secretary to promulgate rules that are necessary or expedient to implement or administer the provisions of Title IV.

OSM received 32 comments from 12 agencies and organizations in public hearings and letters. Six comments

were editorial and eight recommended changes to clarify and enhance comprehension of the regulations. Several commenters applauded the expressed policy of the Office to restrict acquisition and condemnation of real property as much as possible and thereby use the Fund for reclaiming lands rather than acquiring lands. They further suggested that the acquisition of lesser interest in land (e.g., leases, easements) whenever possible to accomplish the reclamation work would avoid acquisition and a large inventory of real property that may not be productively utilized.

1. Three commenters recommended that we add "or lands necessary to abate pollution from past coal mining practices" after "Land adversely affected by past coal mining practices." in section 879.11(a).

Response: Section 404 of the Act clearly specifies that eligible lands are those lands which were mined for coal or directly affected by mining processes. Section 407(c) of the Act restricts purchase to adversely affected lands. Therefore, to the extent this addition is directed at purchasing nonaffected lands, the Office would be exceeding the scope of the Act to include it. This does not, however, prevent the placement of a treatment plant on other than abandoned mine land. It simply prevents the purchase of such land with money from the Fund.

2. The question was raised as to whether a State needs to have specific legislative authority to acquire land, condemn land or enter upon land by exercise of the police power. As an example, one State reclamation agency has authority to acquire property but does not have authority to (1) condemn property for reclamation, (2) levy liens for reclamation, or (3) exercise the police power to effect entry onto private lands. They raise the question as to whether the reclamation agency will need to ask the State legislature to provide the same authorities as provided in Pub. L. 95-87 in order for the State to have its reclamation plan approved.

Response. Section 405(d) of the Act requires that a State enact or already have in effect existing legislation to implement Pub. L. 95-87 in order to qualify for program approval. This is interpreted as requiring the State legislature to give or make available to the State reclamation agency comparable authority to that provided in Title IV of the Act, including the authority to condemn, enter and place liens. Guidelines for State statutes are being prepared at the present time and will be provided to the States upon completion.

3. One commenter recommended deletion of Sec. 879.11(e) because it is overly restrictive and serves no overriding public interest. He cautioned that fragmented ownership should be avoided.

Response: The comment was not accepted. Section 407(c) of the Act provides for acquisition of only those interests in land or water necessary for reclamation or post-reclamation uses. Consequently, land acquisition will be the exception rather than the rule and limited by the scope of the project.

4. One commenter recommended the deletion of Sec. 879.12, Procedures for Acquisition, to provide flexibility and recognition of differing standards for different States by inserting instead "The Office, State or Indian tribe which acquires land under this Part shall comply with the applicable relocation law, regulations and procedures specified by the Office, State or Indian tribe."

Response: The comment was rejected. Section 407(e) of the Act and other Federal regulations (OMB Circular A102, 41 CFR 114-50-103) provide for accomplishing this as set out in the regulations of this section. The Office is legally bound to follow the regulations of the Department of Interior, the Department of Justice and the Office of Management and Budget.

5. Two commenters suggested that a State be allowed to waive user charges on acquired land.

Response: The comment was accepted. The language in Sec. 879.14(b) was changed to include States and Indian tribes. User fees may be waived when determined to be in the public interest. When the use primarily benefits the health, safety, or environmental values of the greater community or area in which the land is located and such use will protect the land and improvements and will not result in a significant monetary gain or profit to the user, it may be considered to be in the public interest. A determination must be made as to whether the land use is in itself beneficial to the public, whether the cost of collecting fees would be excessive in terms of returns and whether user

fees are required to offset maintenance costs. These are determinations that must be made locally; therefore, the States and Indian tribes are in the best position to make them on lands under their jurisdiction.

6. Several commenters objected to the fact that land use agreements and reverter provisions are provided for when reclaimed land is transferred to a State agency or political subdivision, but such restrictions are not provided for in the case of sales for industrial, commercial, residential or recreational development.

Response: Section 407(e) of the Act requires land use agreements and reverter provisions in transfers to State or local governments. General safeguards, applicable to all land disposals, are included in Sec. 879.15 of the regulations to assure that disposition of land is not contrary to the purposes for or authority under which the acquisition was made.

7. One commenter objected to the fact that the State's preference right to purchase reclaimed land requires the State to pay fair market value or not less than the cost to the United States of the purchase and reclamation of the land.

Response: Section 407(e) of the Act sets forth this requirement. It should be noted that, alternatively, the State can also bid at public sale.

## PART 882 -- RECLAMATION ON PRIVATE LAND

Part 882 states the authority of the Office, States and Indian tribes to perform reclamation on private lands. It establishes a requirement for appraisals of the land value before and after reclamation work consistent with uniform appraisal standards. The rules also establish conditions and procedures for the filing of liens on private property equal to the increase in fair market value that results from reclamation work under certain circumstances.

Thirty-seven comments were received from 17 commenters.

1. One commenter suggested that loans be made to private landowners for reclamation work and another commenter suggested that the landowner be sent a bill for reclamation costs.

Response: The comments were not accepted. The Act does not provide authority for those activities. Section 408 of the Act does, however, provide for the filing of liens in specific instances. Rules for filing liens are found in Sec. 882.13 of the regulations.

2. One commenter recommended that the wording of the regulations be changed to specify that the lien shall not exceed the increase in the market value of the land and asked that we delete the requirement for a statement of moneys expended.

Response: We agree that the lien cannot exceed the difference between the pre-reclamation and post-reclamation appraised market values. The rule as proposed stated this concept in old Sec. 848.12(a) now Sec. 882.12(a). Section 408(a) of the Act requires that a statement of moneys expended for the reclamation work be filed along with the appraisals. No change was required.

3. One commenter was concerned that the provision for filing a lien within 6 months was not a sufficient time to evaluate the increase in market value of the reclaimed land.

Response: This provision for filing the lien within 6 months of completion of reclamation work is required by section 408(a) of the Act.

4. One commenter suggested that the regulations provide for an appraisal to be made by an independent appraiser and notarized rather than provide for following procedures of the Uniform Appraisal Standards handbook.

Response: The suggestion was accepted for appraisals made for the purpose of filing liens. This conforms more

closely to the language of the Act. The requirement for following the Uniform Appraisal Standards handbook was, however, retained to meet the requirements placed on us by the Department of Interior regulations and requirements of the Department of Justice.

5. Eleven commenters objected to the word shall in describing when a lien is to be filed in Sec. 882.13 of the regulations. The Act indicates may and all commenters favored may.

Response: The legislative history is clear that Congress intended that no windfall profits should inure to the benefit of private landowners as a result of reclamation work on their land. Both House Report No. 95-218 at page 139 and the Conference Report on the final bill at page 100 indicate that a lien should be used by either the State or the Secretary to recover the costs, up to the increase in fair market value, of reclaiming abandoned property. Therefore, the use of mandatory language in Sec. 882.13(a) requiring the State, Office, or Indian tribe to place a lien on private property is justified.

However, there were three problems with proposed Sec. 882.13(a)(3), which allowed the Director to waive a lien if he determined a lien would not be consistent with the purposes of the reclamation and the landowner dedicated the property for a valid public use for an appropriate period of time. First, that provision took the decision of waiver away from States or Indian tribes. If a waiver is justified, that decision should reside equally with States or Indian tribes because the Act itself states that "\* \* \* the Secretary or the State, pursuant to an approved State program, shall itemize the monies so expended and may file a statement \* \* \*. Such statement shall constitute a lien upon the said land." Section 408(a). Indian tribes are included because section 405(k) of the Act defines Indian tribes as "States" for purposes of Title IV.

Second, while the concept of a waiver provision is authorized by use of the discretionary word "may" in section 408(a), House Report No. 95-218 at page 139 is clear that Congress did not intend the use of any device which would, in effect, amortize the cost of the reclamation work over a period of time at the end of which the landowner would be released from all repayment obligations. The language in proposed Sec. 882.13(a)(3) contravened the expressed intent not to amortize by suggesting the use of a dedication for a limited period of time.

Third, the waiver provision as written did not address those situations where it may be unfair to burden a private landowner with a lien. For instance, if subsidence occurred on land recently purchased and the purchaser had no knowledge of the underground mine workings which were the cause of the subsidence, placing a lien on that property may result in the landowner paying twice. In fact, the value of his land may not increase over the amount he paid for the land only a short time before the property subsided. However, compared to the value of the land in a subsided condition, the reclaimed portion may be worth substantially more. In such a case, it is doubtful that a genuine windfall would result. Another example may be the case where reclamation work on an individual's land would actually produce far more benefit to the community at large, such as reclamation to correct acid drainage, siltation into streams, or aesthetic impacts. Such work may be deemed to be in the interests of the public health, safety or general welfare rather than viewed only in terms of the benefit to the individual landowner.

The facts and circumstances surrounding each such case, and others that may arise, must be examined to determine whether a lien is appropriate or necessary to protect the public from windfall profits inuring to the benefit of private landowners. The Office has, therefore, redrafted Sec. 882.13(a)(3) to extend waiver authority to States and Indian tribes when the work performed is primarily for off-site benefits or is the result of unforeseen problems and will not result in a significant increase in value.

6. Thirteen commenters objected to the provision in subpart 882.14 for satisfaction of the lien within 5 years on the grounds that it will discourage program participation, create hardships on landowners and generally result in ill-will.

Response: These comments were generally accepted. There is nothing in the Act or the legislative history that requires satisfaction of a lien within a specified period of time. The Conference Report at page 100 does indicate that the Secretary or State is empowered to act to recover the costs of reclaiming privately owned lands. However, under an earlier House bill (H.R. 9725) it is clear that Congress contemplated satisfaction of liens at the time of sale.

To more accurately reflect Congressional intent the Office has redrafted this section.

This rule is now written to exclude gratuitous and testate or intestate transfers, but it covers all other transfers where there is consideration involved. In other words, liens shall be fully or partially satisfied at the time of sale or exchange for other personal or real property. If partially satisfied, unsatisfied amounts will remain as a lien against the property. New paragraph (b) recognizes that there may be jurisdictions in which liens must be periodically renewed or otherwise maintained to remain effective and subject to satisfaction at the time specified under paragraph(a).

## PART 884 -- STATE RECLAMATION PLANS

Part 884 establishes the procedures and requirements for the State plan required by section 405(b) of the Act. Such plans are required before the Office is authorized to make grants to the States for reclamation work. A State is not eligible to have a plan approved until it has an approved State regulatory program pursuant to section 503 of the Act and subchapter C of this chapter.

1. One commenter asked to have the regulations specify an exact length of time that the State plan covers.

Response: It is recognized that moneys will come into the Fund over a 15-year period. However, a State may elect in its Plan to include any or all of the various uses of the Fund and to address these uses in varying degrees, provided that first priority be given to correcting abandoned coal mine problems. If the magnitude of the problem is known and a reasonable method of solving it is presented, then the time frame of the plan need not be predetermined. We will, however, expect the States to present plans covering a reasonable future period, probably a minimum of 3 to 5 years, allowing appropriate adjustments State by State.

2. One commenter requested that the regulations be revised to reflect the desire that a State planning agency would be the most appropriate agency to be in charge of the State program.

Response: The Act is quite specific in saying that once the State has an approved plan, it has exclusive responsibility and authority to implement the provisions of the approved program. The Governor of the State may choose and so designate any competent agency of the State to carry out the program.

3. Two commenters requested that a State be given the opportunity to take corrective action to prevent withdrawal of Plan approval.

Response: The comments were accepted because it is desirable to provide a fast and informal means to prevent a State program from being interrupted or withdrawn. Section 884.16(b) had been changed to provide the opportunity for corrective action by allowing for consultation, a hearing if requested and performance of remedial action prior to the notice of withdrawal.

4. The question was asked whether the regulations allow a private citizen to submit a project directly to the Office of Surface Mining for funding if the project was previously submitted to and rejected by his State.

Response: Although the Act and the regulations strongly encourage citizens to work with an active State program, a private citizen can submit a proposed project to the Office for consideration provided it meets the reclamation requirements set forth in Part 874 of the regulations.

5. Numerous comments were received criticizing the amount of detail required in the State plan, especially the reclamation activities in Sec. 884.13(f).

Response: The regulations, as proposed, require a general description of these reclamation activities. It was intended that the word "general" would convey the meaning that existing and readily available information would be gathered, analyzed, and summarized. The States must, however, present enough data to demonstrate to the Office and to the public that the plan represents a feasible and orderly approach to the required reclamation. It is

recognized that additional information may have to be obtained in future years to either update the State plan or to fill in minor gaps. In view of the requirements in the Act to consider on-site and off-site local and regional impacts of past mining, it is felt that the information required is not excessive.

6. One commenter questioned the difference between the public involvement in Sec. 884.13(c)(7) and Sec. 884.13(e).

Response: Subsection 884.13(c)(7) requires the State to give a detailed description of the policies and procedures to be followed in the State Reclamation Program, i.e. operation of the program (which includes the original Plan, amendments and annual grants). Section 884.13(e) requires the State to give a detailed description of the extent of public involvement in the preparation of the proposed State Reclamation Plan. No changes were required.

## PART 886 -- STATE RECLAMATION GRANTS

Part 886 includes procedures and requirements for annual grants to States to conduct reclamation activities under their approved Reclamation Plans. Grant applications will be approved by the Regional Directors of the office. The procedures for processing grant applications follow closely the procedures for other grant programs administered by the Office with one major exception: Grant applications will be submitted according to the requirements of OMB Circular A-102 in the format for Federal Assistance Applications for Construction Programs. Limited variations to this format are provided.

1. Several commenters suggested that Sec. 886.12(b) and Sec. 886.15(b)(1) be expanded to clarify the administrative costs incurred in support of the State abandoned mine land program which can be included in the annual grant.

Response: These comments have been accepted. Since Sec. 886.21(a) sets forth those costs which are allowable under section 401(2)(9) of the Act, it has been revised and referenced in Sec. Sec. 886.12(b) and 886.15(b)(1).

2. Two comments were received requesting that the grant period set forth in section 886.13 be extended so that funding may be approved for the life of the proposed project.

Response: These comments were partially accepted. The grant will provide funding for both support of the State program and for individual projects as required in section 405(f) of Pub. L. 95-87 of the Act. Supportive costs, including administrative, are to be funded on an annual basis. However, individual projects applied for in any year may be funded for a maximum of 3 years. The regulations have been rewritten to provide this flexibility. The alternative for States to fund projects through sequential grants has been retained.

3. For Sec. Sec. 886.15(c) and 886.17(c) one commenter suggested that if notification is not received within 30 days regarding whether or not the grant application is approved, the application should be deemed approved.

Response: The comment was rejected. The language of section 405(h) of the Act indicates grants should not be self-executing, but rather they require action by the Office on an annual basis. Section 405(i) of the Act requires monitoring of the program. Therefore, positive action is required to approve a grant. The language has been changed, however, to provide notification within 30 days regarding the status of the application.

Because of the concern over the funding for the life of the project, language has been added to Sec. 886.15(b)(1) allowing funding for individual parts of multiphased projects. The information submitted with the individual project for which funding is being requested must include information on the overall magnitude, scope, and total cost of the entire project.

4. One commenter suggested that the requirements for notification of grant changes in section 886.17(b) should be deleted.

Response: This comment has been rejected since section 405(h) of the Act requires prior approval of both the plan

and proposed projects. Changes in projects which require notice are set forth in OMB Circular A-102. Where the proposed changes exceed the limitations set forth therein, approval must be made to insure that the amendment proposals conform to the requirements of the approved plan.

5. For Sec. 886.18(a)(3) one commenter suggested changing the authorization provided to the Regional Director for terminating, suspending or reducing grants so that he has discretionary authority on the action.

Response: This comment has been rejected since section 405(d) of the Act requires such action in cases of failure to implement, enforce or maintain an approved State regulatory program. However, the regulations do provide the retention of those funds that are necessary to meet contractual commitments made prior to the effective date of the termination to the extent such commitments cannot be reduced.

6. One commenter suggested that the 10-day minimum time limit for response upon notification of intent to reduce, suspend or terminate a grant in Sec. 886.18(b)(1) be extended to 30 days.

Response: This comment was rejected. The language of this section conforms to the provisions of OMB Circular A-102. The time frame is considered sufficient for the agency to request the opportunity for consultation and remedial action prior to termination, suspension or reduction of the grant. It was noted that paragraphs (4) and (5) of Sec. 886.18(b) were inconsistent; therefore, paragraph (5) was deleted and subsequent paragraphs renumbered accordingly.

7. Several commenters suggested that subpart 886.21 be reworded to clarify in what instances the 90 percent matching funds are applicable.

Response: These comments were accepted and Sec. 886.21 was reworded so that it is clear that 90 percent matching funds apply only to the acquisition of land as set forth in section 407(e) of the Act.

8. For Sec. 886.21 several commenters suggested that language be added to cover other administrative costs necessarily incurred in the program.

Response: Administrative costs are authorized by section 401(c)(9) of the Act. Section 886.21 has been reworded to allow for such costs. As a matter of policy, the Office will assign a lower priority to costs incurred from the operation and maintenance of treatment plants because of the increasing costs associated with permanent facilities.

9. One commenter suggested that the time required for the retention of records in Sec. 886.24 be specified.

Response: This comment has not been accepted. The regulations reference OMB Circular A-102, Attachment C, which contains the specific retention requirements, setting the minimum at 3 years.

10. One commenter suggested that wording be added to Sec. 886.24 to make records available for public inspection.

Response: This comment was not accepted since the regulations reference OMB Circular A-102, Attachment C, which specifies the requirements for availability of records to the public.

11. One comment suggested that the regulations should include grants to other Federal agencies, in addition to the Bureau of Indian Affairs, for reclamation of lands under their jurisdiction.

Response: The regulations are intended to include all eligible lands in the United States. The regulations specifically cover lands under the jurisdiction of States and Indian tribes because those lands are "private" lands as opposed to lands owned by the U.S. Funds may be transferred to other Federal agencies for reclamation of eligible lands if provided for in a cooperative agreement under section 412(b) of the Act.

## PART 888 -- INDIAN RECLAMATION

Part 888 establishes special interim procedures for identifying and conducting needed reclamation work on Indian lands. Such procedures are necessary because the Act does not provide for Indian regulatory programs until a study of how Indian lands are to be regulated is completed (section 710 of the Act) and legislation providing for Indian regulation of these lands is enacted. Section 405(c) of the Act prohibits approval of funding of a State abandoned mine reclamation program unless the State has an approved State regulatory program. Section 405(k) of the Act requires that Indian tribes be considered as States for purposes of Title IV.

1. One comment was received expressing concern over the proposed regulations because they did not authorize Indian tribes to formally adopt reclamation plans. The commenter expressed the hope that the Office would complete the study under section 710 of the Act so that tribes would not be penalized for a long period of time.

Response: The Office lacks authority to approve or fund an Indian Reclamation Plan at this time because Indian tribes are not authorized to develop and get approval of a regulatory program; therefore, such authorization cannot be provided in these regulations.

The regulations authorize the Regional Directors of the Office to work with Indian tribes and to consult with the Bureau of Indian Affairs to develop plans for reclamation activities on Indian lands. Such a procedure is authorized by section 412(a) of the Act. No significant alternative has been identified other than deferral of Indian programs until the section 710 study is completed. Such an alternative might effectively preclude reclamation work on Indian lands and would be detrimental to developing a systematic approach for reclamation activities on Indian land during the development of the Abandoned Mine Land Program. Deferral of Indian programs at this time would also be in conflict with the overall structure of Title IV which anticipates Indian tribe participation at the same level as States, section 710 of the Act not to the contrary.

In this regard, Indian tribes were included in the drafting of Parts 872-888 in anticipation of specific legislative authority granting regulatory status to them. If the Congressional authorization is ultimately the same as for States, Part 888 may be deleted. If the authorization differs from that given States, Parts 872-888 can be appropriately amended and Part 888 may also be amended and expanded. It should be observed, however, that Parts 872-888 do not contain any independent authority for Indian tribes to act beyond that allowed by the Act. Part 888 is established to provide an administrative vehicle for the Office to begin necessary reclamation activities on Indian lands in accordance with Parts 872-888 when an Indian tribe desires such activity. The Office is making every effort to complete the study specified in section 710 of the Act as quickly as possible, providing for full participation of affected tribal groups.

## INFORMATION COLLECTION PROVISIONS

A number of these regulations require the States and Indian tribes to collect, submit or retain certain information. By publication of these final regulations, this Department has determined that such information is necessary to the performance of its responsibilities under the Act and must be collected, submitted or retained. Accordingly, these requirements, included in regulation Sec. Sec. 872.4(c), 872.11(b) (2) and (3), 872.12(a), 872.13(a), 877.13(c), 879.13, 879.14(b), 879.15 (a)(3) and (e)(1), 882.12, 882.13, 884.13, 884.15, 886.14, 886.15, 886.17(b), 886.18(c)(2), 886.19, 886.22, 886.23, and 886.24 are adopted, subject to review by the General Accounting Office, pursuant to 44 U.S.C. 3512, to insure that a minimum burden is imposed upon States or Indian tribes in the manner in which such information is proposed to be obtained. The specific reporting provisions in these regulations will be effective November 15, 1978, or on the date of GAO clearance, whichever is earlier.

## DRAFTING INFORMATION

The principal authors of these regulations are Paul Reeves, Dan Jones, Ray Booker, Richard Nalbandian and Don O'Bryan, Office of Surface Mining Reclamation and Enforcement; and John Beattie, Office of the Solicitor.

Interested persons may examine the information, comments and legal opinions relied on by the authors during normal business hours in the Office of the Assistant Director, Abandoned Mine Land Reclamation, Office of Surface

## Mining Reclamation and Enforcement.

Dated: October 18, 1978.

JOAN M. DAVENPORT, Assistant Secretary -- Energy and Minerals.

30 CFR Chapter VII is amended by adding a new Subchapter R to read as set forth above. Subchapter R consists of a new Part 870 which is redesignated from Part 837, and new Parts 872, 874, 877, 879, 882, 884, 886, and 888; the new Parts read as set forth below:

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PART 837 -- [REDESIGNATED AS PART 870]

PART 870 -- [REDESIGNATED FROM PART 837]

PART 872 -- ABANDONED MINE RECLAMATION FUNDS

Sec.

- 872.1 Scope.
- 872.2 Objectives.
- 872.4 Responsibilities.
- 872.5 Definitions.
- 872.11 Abandoned Mine Reclamation Fund.
- 872.12 State Abandoned Mine Reclamation Funds.

AUTHORITY: Secs. 102(g), 201(c), 401, 402(8) and

872.13 Indian Abandoned Mine Reclamation Funds.

AUTHORITY: Secs. 102(g), 201(c), 401, 402(8) and 412, Pub. L. 95-87, 91 Stat. 449, 456, 458 and 466 (30 U.S.C. 1211, 1231, 1232, and 1242).

Sec. 872.1 SCOPE.

(a) This Part sets forth general responsibilities for administration of abandoned Mine Land Reclamation Programs and procedures for the Abandoned Mine Reclamation Funds to finance such programs.

(b) Included in this Part are general provisions describing --

(1) The source of money and use of such monies to administer the Abandoned Mine Land Reclamation Program; and

(2) The general responsibilities of agencies of the Federal Government, States, and Indian tribes in the conduct of the programs.

(c) Regulations for implementation of the Rural lands Rural Lands Reclamation Program are the responsibility of the Secretary of Agriculture. The Department of Agriculture has identified this program as the Rural abandoned Mine Program (RAMP).

Sec. 872.2 OBJECTIVES.

The objectives of this Part are to provide an overview of the Abandoned Mine Land Reclamation Program responsibilities and to provide detailed procedures for administration of State, Indian and Federal Abandoned Mine Land Reclamation Funds.

Sec. 872.4 RESPONSIBILITIES.

(a) The Director, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary for administration of the Abandoned Mine Reclamation Fund and Abandoned Mine Land Reclamation Program.

(b) The regional Directors of the Office are responsible for -

(1) Conducting reclamation activities where work is performed by the Office using the funds available to the Secretary;

(2) Reviewing and approving annual submissions of project grant applications by States and Indian tribes under approved reclamation programs;

(3) Consulting with Indian tribes for which receipts to the Abandoned Mine Reclamation Fund are allocated to develop an orderly approach to reclamation until such time as the study required by section 710 of the Act is completed and authorities provided for Indian regulatory programs comparable to those of States under section 503 of the Act;

(4) Coordinating projects carried out by the Office with activities carried out under Rural Lands, State and Indian Reclamation Programs conducted with monies from the Fund; and

(5) Consulting with Federal and State agencies as necessary and developing cooperative agreements with the appropriate surface management agency when Federal lands are considered for inclusion in a Federal or State Reclamation Program.

(c) The States are responsible for --

(1) Preparing and submitting a State Reclamation Plan to the Director if the State elects to participate in the Abandoned Mine Land Reclamation Program;

(2) Establishing a State Abandoned Mine Reclamation Fund for use in conducting the State Reclamation Program;

(3) Submitting annual applications for grants, including descriptions of proposed projects;

(4) Submitting requests to the Regional Director for work to be done on noncoal mined lands;

(5) Submitting requests to the Regional Director for construction of specific facilities in communities impacted by coal development;

(6) Conducting reclamation work in accordance with grant agreements;

(7) Consulting with State and Federal agencies as necessary and developing cooperative agreements with the appropriate surface management agency when State or Federal lands are considered for inclusion in a State Reclamation Program; and

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(8) Submitting reports annually to the Regional Director describing progress on previously funded projects.

(d) The Secretary of Agriculture through the Soil Conservation Service is responsible for --

(1) Promulgating regulations for conducting the Rural Lands Reclamation Program;

(2) Submitting annual requests to the Director for allocation of moneys for use in the Rural Lands Reclamation Program;

(3) Submitting annual reports to the Director describing progress of work previously funded; and

(4) Coordinating the Rural Lands Reclamation Program with State and Indian Reclamation Programs and with reclamation activities conducted by the Office.

#### Sec. 872.5 DEFINITIONS.

(a) The Abandoned Mine Reclamation Fund, or Fund is a trust fund established on the books of the U.S. Treasury for the purpose of accumulating revenue designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

(b) Allocate means the administrative identification in the records of the Office of moneys in the Fund for a specific purpose; e.g., identification of moneys for exclusive use by a State.

(c) Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

(d) Expended means that moneys have been paid out by a State or Indian tribe for work that has been accomplished or services rendered.

(e) Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons property, or the environment and to which persons or improvements on real property are currently exposed.

(f) Indian Abandoned Mine Reclamation Fund, or Indian Fund, means a separate fund establish by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

(g) Indian reclamation program means a program established by an Indian tribe in accordance with this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

(h) Reclamation activities means restoration, reclamation, abatement, control, or prevention of adverse effects of mining.

(i) Reclamation plan means a plan submitted and approved under 30 CFR Part 884.

(j) State Abandoned Mine Reclamation Fund or State Fund, means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

(k) State reclamation program means a program established by a State in accordance with this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

#### Sec. 872.11 ABANDONED MINE RECLAMATION FUND.

(a) Revenue to the Fund shall include --

(1) Reclamation fees collected under section 402 of the Act and 30 CFR Part 870;

(2) Amounts collected by the Office from charges for use of land acquired or reclaimed with moneys from the Fund under 30 CFR Part 879;

(3) Moneys recovered by the Office through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under 30 CFR Part 882;

(4) Moneys recovered by the Office from the sale of lands acquired with moneys from the Fund or by donation under 30 CFR Part 879; and

(5) Moneys donated to the Office for the purpose of abandoned mine land reclamation.

(b) Moneys deposited in the Fund and appropriated by the Congress shall be used for the following purpose --

(1) An amount not exceeding 10 percent of the reclamation fees collected each quarter, up to a maximum of \$10,000,000 each year, shall be used to finance the Small Operator Assistance Program under 30 CFR Part 795.

(2) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises the Office in writing that it does not intend to submit a State Reclamation Plan, no moneys shall be allocated to that State. Amounts allocated to a State that have not been granted to the State within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the State that have not been expended within 3 years from the date of allocation may be withdrawn from the State if the Director finds in writing

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(3) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian Reclamation Plan. If an Indian tribe advises the Office in writing that it does not intend to submit an Indian Reclamation Plan, no moneys shall be allocated to that tribe. Amounts allocated to Indian lands that have not been granted to the Indian tribe within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the Indian tribe that have not been expended within 3 years from the date of allocation may be withdrawn from the Indian tribe if the Director finds in writing --

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(4) An amount not exceeding 20 percent of the moneys deposited in the Fund annually may be transferred to the Secretary of Agriculture to carry out the Rural Lands Reclamation Program.

(5) All amounts not used for the above purposes shall be available to the Director for the following purposes --

(i) Acquisition, reclamation, and restoration of land and water resources adversely affected by past coal mining.

(ii) Filling of voids and sealing of tunnels, shafts, and entryways and the reclamation of the adverse

surface impacts of underground or surface mining for other minerals and materials, including acquisition of land and water if required. This work shall be done only with those moneys allocated or available for allocation to a State or Indian lands under paragraphs (b)(2) or (3) of this section and at the request of the Governor of a State or the Indian tribe.

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(iii) Studies by contract with public or private organizations to provide information, advice, or technical assistance, including research, development, and demonstration projects.

(iv) Reclamation fee collection activities and other administrative expenses necessary to accomplish the purposes of Title IV of the Act.

(v) Reclamation grants to States or Indian tribes in excess of amounts provided under paragraph (b)(2) or (3) of this section.

(vi) Cooperative projects to compile information required for the preparation of State and Indian reclamation plans, as specified in Part 884.13(f) of this subchapter. This work shall be done only with those moneys allocated or available for allocation to a State or Indian tribe and at the request of the Governor of a State or the Indian tribe.

#### SEC. 872.12 STATE ABANDONED MINE RECLAMATION FUNDS.

(a) An account to be known as the State Abandoned Mine Reclamation Fund shall be established in each State with an approved State Reclamation Plan. The State Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the State Fund shall include --

(1) Amounts granted to the State by the Office for purposes of conducting the approved State Reclamation Plan under 30 CFR Part 886.

(2) Moneys collected by the State from charges for uses of lands acquired or reclaimed with moneys from the State Fund under 30 CFR Part 879.

(3) Moneys recovered by the State through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the State Fund under 30 CFR Part 882.

(4) Moneys recovered by the State from the sale of lands acquired with moneys from the State Fund under 30 CFR Part 879.

(5) Such other moneys as the State decides should be deposited in the State Fund for use in carrying out the State Reclamation Program.

(c) Moneys deposited in the State Fund shall be used to carry out the State Reclamation Plan approved under 30 CFR Part 884.

#### Sec. 872.13 INDIAN ABANDONED MINE RECLAMATION FUNDS.

(a) An account to be known as the Indian Abandoned Mine Reclamation Fund shall be established by each Indian tribe with an approved Indian Reclamation Plan. The Indian Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the Indian Fund shall include --

(1) Amounts granted to the Indian tribe by the Office for purposes of conducting the approved Indian Reclamation Plan.

(2) Moneys collected by the Indian tribe from charges for uses of land acquired or reclaimed with moneys from the Indian Fund under 30 CFR Part 879.

(3) Moneys recovered by the Indian tribe through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the Indian Fund under 30 CFR Part 882.

(4) Moneys recovered by the Indian tribe from the sale of lands acquired with moneys from the Indian Fund under 30 CFR Part 879.

(5) Such other moneys as the Indian tribe decides should be deposited in the Indian Fund for use in carrying out the Indian Reclamation Program.

(c) Moneys deposited in the Indian Fund shall be used to carry out reclamation activities under 30 CFR Part 888.

## PART 874 -- GENERAL RECLAMATION REQUIREMENTS

Sec.

- 874.1 Scope.
- 874.2 Objectives.
- 874.5 Definitions.
- 874.11 Applicability.
- 874.12 Eligible land and water.
- 874.13 Reclamation objectives.
- 874.14 Reclamation project evaluation.

AUTHORITY: Sec. 201(c), 403, 404, 409, and 412(a), Pub. L. 95-87, 91 Stat. 449, 458, 459, 465, and 466 (30 U.S.C. 1211, 1233, 1234, 1239, and 1242).

### Sec. 874.1 SCOPE.

This Part establishes general requirements for the selection of work to be performed with moneys from the Abandoned Mine Reclamation Fund, and State or Indian Abandoned Mine Reclamation Funds. It includes land and water eligibility requirements, reclamation project objectives and standards, and project selection and evaluation factors.

### Sec. 874.2 OBJECTIVES.

The objectives of this Part are to establish conditions for the use of Abandoned Mine Reclamation Funds that are common to approved State and Indian Reclamation Programs, the Rural Lands Reclamation Program, and the reclamation activities conducted or funded directly by the Office.

### Sec. 874.5 DEFINITIONS.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water:

- (a) Where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, it has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and
- (b) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

Sec. 874.11 APPLICABILITY.

The provisions of this Part apply to all reclamation projects to be carried out with money from the Fund or a State or Indian Fund as defined by Part 872 of this subchapter.

Sec. 874.12 ELIGIBLE LANDS AND WATER.

(a) Lands and water are eligible for reclamation activities if:

(1) They were mined or affected by mining processes;

(2) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under 30 CFR 886 and 888.

(b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities under a State or Indian Reclamation Program if the Director finds in writing that --

(1) The conditions of paragraph (a) of this section have been met;

(2) The reclamation has been requested by the Governor of the State or head of the tribal governing body;

(3) All reclamation with respect to abandoned coal mine land and water has been accomplished within the State or Indian lands in which they are located or the reclamation is necessary for the protection of the public health and safety; and

(4) Moneys allocated to the State or Indian tribe under Sec. 872.11(b) (2) and (3) are available for the work.

Sec. 874.13 RECLAMATION OBJECTIVES AND PRIORITIES.

Reclamation projects shall meet one or more of the objectives stated in this section. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives.

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(a) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices.

(b) Protection of public health, safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.

(c) Restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

(d) Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.

- (e) Protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.
- (f) Development of publicly owned land adversely affected by past coal mining practices, including land acquired under 30 CFR Part 879, for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.
- (g) Protection of the public from hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. However, upon the request of the Governor of a State or head of an Indian tribe, such work may be under taken before the priorities related to past coal mining have been fulfilled.
- (h) Protection of the public from hazards to health and safety from the adverse effects of past noncoal mining practices.
- (i) Restoration of the environment degraded by the adverse effects of past noncoal mining.
- (j) Construction of public facilities in communities impacted by coal development if the Governor of a State or head of an Indian tribe certifies that all other objectives of the fund have been met, the available impact funds are inadequate for such construction consistent with Sec. 884.12(d) and the Director concurs.

#### Sec. 874.14 RECLAMATION PROJECT EVALUATION.

(a) Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under Sec. 874.13. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include

(1) The need for reclamation work to accomplish one or more specific reclamation objectives as stated in Sec. 874.13.

(2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

(3) The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to --

(i) Protection of human life, health, or safety.

(ii) Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.

(iii) Protection of public or private property.

(iv) Abatement of adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices.

(v) Improvement of environmental conditions which may be considered to generally enhance the quality of human life.

(vi) Improvement of the use of natural resources, including post-reclamation land uses which --

(a ) Increase the productive capability of the land to be reclaimed.

(b ) Enhance the use of surrounding lands consistent with existing land use plans.

(c) Provide for construction or enhancement of public facilities.

(d ) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.

(vii) Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.

(4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

(5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

(6) The availability of additional coal or other mineral or material resources within the project area which --

(i) Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(ii) Requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

(7) The acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable State, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located.

(8) The probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed.

(b) States, Indian tribes, or Federal agencies administering reclamation programs and projects shall incorporate the evaluation factors stated in paragraph (a) into the procedures and processes for selecting projects in a manner which they deem appropriate. Additional factors may be developed to meet specific or unique needs. Specific values may be assigned to the factors stated in paragraph (a). All evaluation factors are subject to the plan approval process in 30 CFR Part 884.

## PART 877 -- RIGHTS OF ENTRY

Sec.

877.1      Scope.

877.11     Consent to entry.

877.12     Entry for studies or exploration.

877.13     Entry and consent to reclaim.

877.14     Entry for emergency reclamation.

AUTHORITY: Secs. 201(c), 407 (a) and (b), 410 and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, and 466 (30 U.S.C. 1211, 1237, 1240, and 1242).

Sec. 877.1    Scope.

This part establishes procedures for entry to lands or property by the Office, or a State, or Indian tribe under an approved Reclamation Plan, for the purposes of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and for the purpose of performing reclamation work.

Sec. 877.11 CONSENT TO ENTRY.

The Office, State, or Indian tribe shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or his authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement shall not include any commitment by the Office, State, or Indian tribe to perform reclamation work nor to compensate the owner for entry.

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Sec. 877.12 ENTRY FOR STUDIES OR EXPLORATION.

(a) The Office, State, or Indian tribe or their agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

(b) If the owner of the land to be entered under this section will not provide consent to entry, the Office, State, or Indian tribe shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

(c) Entry required to investigate and explore reported emergency conditions will be governed by the provisions of Sec. 877.14(c).

Sec. 877.13 ENTRY AND CONSENT TO RECLAIM.

(a) The Office, State, or Indian tribe or their agents, employees, or contractors, may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.

(b) Prior to entry under this section, the Regional Director, State, or Indian tribe shall find in writing with supporting reasons that --

(1) Land or water resources have been adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or

(4) The owner will not give permission for the Office, the State, or Indian tribe, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The Regional Director, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting

reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

Sec. 877.14 ENTRY FOR EMERGENCY RECLAMATION.

(a) The Office, its agents, employees, or contractors shall have the right to enter upon any 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 mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.

{49944} (b) Prior to entry under this section, the Regional Director shall make a written finding with supporting reasons that --

(1) An emergency exists constituting a danger to the public health, safety, or general welfare;

(2) Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining is necessary and;

(3) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. The Regional Director shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical. The notice shall be mailed, return receipt requested, to the owner, if known, and shall include a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement that an emergency existed and where the findings required by this section may be inspected or obtained.

(d) The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages as a result of the entry.

PART 879 -- ACQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER

Sec.

- |        |                                |
|--------|--------------------------------|
| 879.1  | Scope.                         |
| 879.11 | Land eligible for acquisition. |
| 879.12 | Procedures for acquisition.    |
| 879.13 | Acceptance of gifts of land.   |
| 879.14 | Management of acquired land.   |
| 879.15 | Disposition of reclaimed land. |

AUTHORITY: Sec. 201(c); 407 (c), (d), (e), (f), (g), and (h); and 412(a), Pub. L. 95-87, 91 Stat. 449, 463, 464, and 466 (30 U.S.C. 1211, 1237, and 1242).

Sec. 879.1 SCOPE.

This Part establishes procedures for acquisition, management, and disposition of eligible land and water for reclamation purposes by the Office or a State or Indian tribe under an approved Reclamation Plan. It also establishes requirements for the collection of charges for the use of acquired land and disposition of the proceeds from the use or sale of acquired land.

#### Sec. 879.11 LAND ELIGIBLE FOR ACQUISITION.

(a) Land adversely affected by past coal mining practices may be acquired with moneys from the Fund by the Office or by a State or Indian tribe if approved in advance by the Office. Prior to approval of the acquisition of such land, the Regional Director shall find in writing that acquisition is necessary for successful reclamation and that --

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(2) Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

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(b) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by the Office or by a State or Indian tribe if approved in advance by the Office. Prior to approval of the acquisition of such sites, the Regional Director shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land Reclamation Program or that public ownership is desirable to meet an emergency situation and prevent recurrence of adverse effects of past coal mining practices.

(c)(1) Land adversely affected by past mining practices may be acquired by the Office if the Director finds in writing that acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for-

(i) Persons disabled as the result of employment in the mines/or work incidental thereto;

(ii) Persons displaced by acquisition of land under these regulations;

(iii) Persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency for which the Regional Director has made the determination required by Sec. 877.14;

(iv) Persons dislocated as the result of natural disasters or catastrophic failures from any cause.

(2) The Director may acquire such land in the name of the United States directly or through a State or Indian tribe, any department, agency, or instrumentality of a State or Indian tribe, or any public body or nonprofit organization designated by a State or Indian tribe.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of underground or surface mines may be acquired by the Office if the Director finds that acquisition is necessary under Sec. 874.12(b).

(e) The Office, State or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if-

(1) The customary practices and laws of the State in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary to the reclamation work planned or the post-reclamation use of the land;  
and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

#### Sec. 879.12 PROCEDURES FOR ACQUISITION.

(a) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser by the Office, State, or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference 1973).

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The Office, State, or Indian tribe which acquires land under this part shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq; 41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq.; and regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for Federal public purposes.

(e) Title to all interests in land acquired by the Office shall be in the name of the United States.

(f) Title to all interests in land acquired by a State shall be in the name of the State and shall be recorded in accordance with applicable State law and regulation.

(g) Title to all interests in land acquired by an Indian tribe shall, where authorized by law, be held in the name of the United States in trust for the benefit of that tribe and shall be recorded in the appropriate office of the Bureau of Indian Affairs. In absence of a trust authorization, title shall be held in the name of the tribe and shall be recorded in accordance with applicable law.

{49945} (h) Property acquired by the Office under this part shall be included in the Annual Report of Real Property which shall be compiled and filed in accordance with IPMR 114-3.2. The report shall include real property acquired by donation.

#### Sec. 879.13 ACCEPTANCE OF GIFTS OF LAND.

(a) The Director, in accordance with Department of Justice procedures for the acquisition of real property, or a State or Indian tribe under an approved Reclamation Plan, may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(b) Offers to make a gift of such land or interest in land shall be in writing and shall include-

(1) A statement of the interest which is being offered.

(2) A legal description of the land and a description of any improvements on it.

(3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.

(4) A statement that-

- (i) The offerer is the record owner of the interest being offered.
- (ii) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
- (iii) There are no adverse claims against the interest offered.
- (iv) There are no unredeemed tax deeds outstanding against the interest offered.
- (v) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.

(5) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Surface Mining Control and Reclamation Act of 1977." Title to donated land shall be in the name of the United States if the donation is to the Office or in the name of the State if the donation is to a State. Title to land donated to an Indian tribe shall, where authorized by law, be taken in the name of the United States in trust for the benefit of that tribe. In the absence of a trust authorization, title shall be taken in the name of the tribe.

#### Sec. 879.14 MANAGEMENT OF ACQUIRED LANDS.

- (a) Land acquired under this Part may be used pending disposition under Sec. 879.15 for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.
- (b) Any user of land acquired under this part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the Office, State, or Indian tribe for providing the benefit, whichever is appropriate. The Regional Director, State, or Indian tribe may waive the fee if found in writing that such a waiver is in the public interest.

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(c) All use fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872, unless previously appropriated or otherwise authorized by the Congress, State legislature, or tribal governing body for the specific purpose of operating and maintaining improvement of the land.

#### Sec. 879.15 DISPOSITION OF RECLAIMED LANDS.

(a) Prior to the disposition of any land acquired under this Part, the Regional Director, State, or Indian tribe which acquired the land shall-

(1) Publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person.

(2) Hold a public hearing if requested as a result of the public notice. The Regional Director, State, or Indian tribe may determine that a hearing is appropriate even if a request is not received. It shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located

at least 30 days before the hearing. All comments received at the hearing shall be recorded.

(3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, State, or Federal laws or regulations which apply.

(b) The Director may transfer the administrative responsibility for land acquired by the Office to any other Federal Department or agency, with or without cost to that Department or agency. The agreement, including amendments, under which a transfer is made shall specify-

(1) The purposes for which the land may be used which shall be consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land shall revert to the Office if, at any time in the future, the Director finds that the land is not used for the purposes specified.

(c) A State or Indian tribe may transfer, with approval of the Regional Director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the State or Indian tribe with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify-

(1) The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land will revert to the State or Indian tribe which acquired the land if, at any time in the future, the land is not used for the purposes specified.

(d) A State or Indian tribe may, with approval by the Regional Director, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the Office. The State or Indian tribe which transfers land to the Office under this paragraph shall have a preference right to purchase such land from the Office after reclamation is completed. The price to be paid by the State or Indian tribe shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State or Indian tribe.

(e) The Director may sell any land acquired and reclaimed under this Part except that acquired under Sec. 879.11(c) to the State or local government within whose borders the land is located or to an Indian tribe if the land is within the exterior boundaries of an Indian reservation.

(1) Before reclaimed land is sold to a State, local government, or Indian tribe, the purchaser shall state in writing the public purposes for which the land is to be used. The public purpose shall be considered valid if it is authorized as a public function by appropriate State law or Indian tribal ordinance and is consistent with the conditions under which the land was acquired.

(2) The price to be paid by the State, local government, or Indian tribe shall be the fair market value of the land in its reclaimed condition. The land may be sold at a lower price negotiated by the Director, but the price shall not be less than the cost to the United States for acquiring and reclaiming the land.

(3) The sales agreement for land sold under this paragraph shall state valid public purposes for which the land may be used. If, at any time in the future, the land is not used for the purposes stated, all right and title to or interest in such land shall revert to the United States.

(f) The Director may transfer or sell land acquired under Sec. 879.11(c), with or without monetary consideration, to any State or political subdivision of a State, to any Indian tribe, or to any person, firm, association or corporation.

(1) The transfer or sale shall not be made unless the Director finds in writing that the transfer or sale is an integral and necessary element of an economically feasible plan for the project for which the land was acquired.

(2) The price at which land is sold under paragraph (f) of this section shall be negotiated between the Director and the purchaser. The price may be below the fair market value if economically necessary for the success of the project.

(3) If the price at which the land is sold is below the fair market value of the land, or if the land is transferred at no cost to the recipient, the recipient shall agree in advance that no portion of the difference between the amount paid and the fair market value will accrue as a profit, or as an offset to other business losses, to any private person, firm, association or corporation.

(4) The transfer or sales agreement for land disposed of under paragraph (f) of this section shall state the purposes for which the land was acquired and will be used. If, at any time in the future the land is not used for the purposes stated, all right, title and interest in such land shall revert to the United States.

(g) The Director, a State, or Indian tribe with the approval of the Regional Director may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, State, or Federal land use plans for the area in which the land is located.

(1) Land shall be sold by public sale only if it is found that retention by the Office, State, or Indian tribe, or disposal under other paragraphs of this section, is not in the public interest.

(2) Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum-

(i) Publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

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(ii) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(h) All moneys received from disposal of land under this Part shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872.

## PART 882 -- RECLAMATION ON PRIVATE LAND

Sec.

- 882.1 Scope.
- 882.11 Operations on private land.
- 882.12 Appraisals.
- 882.13 Lines.
- 882.14 Satisfaction of liens.

AUTHORITY: Sec. 201(c), 407 (a) and (b), 408, 410 and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, 465, and 466 (U.S.C. 1211, 1237, 1238, 1240, and 1242).

Sec. 882.1 SCOPE.

This Part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Office, State, or Indian tribe.

Sec. 882.11 OPERATIONS ON PRIVATE LAND.

Reclamation activities may be carried out on private land if a consent to enter is obtained under Sec.

877.11, or if entry is required and made under Sec. Sec. 877.13 or 877.14.

#### Sec. 882.12 APPRAISALS.

(a) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained by the Office, State, or Indian tribe from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related non-emergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with paragraph (a) of this section and shall state the market value of the land as reclaimed.

(c) The landowner is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed in accordance with Sec. 882.13.

(d) Appraisals for privately owned land which fall under Sec. 882.13(a) (1), (2), and (3) may be obtained from either an independent or staff professional appraiser.

#### Sec. 882.13 LIENS.

(a) The Regional Director, State, or Indian tribe which performs the reclamation work shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the appraisals obtained under Sec. 882.12.

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The Regional Director, State, or Indian tribe may waive the lien if the cost of filing it, including indirect costs to the Office, State, or Indian tribe, exceeds the increase in fair market value as a result of reclamation activities.

(3) The lien may be waived by the Regional Director, State or Indian tribe if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

(b) If a lien is to be filed, the Office, State, or Indian tribe shall, within 6 months after completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments against land and for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under Sec. 882.12. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

#### Sec. 882.14 SATISFACTION OF LIENS.

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this paragraph.

(b) The Office, State, or Indian tribe which files a lien on private property shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

## PART 884 -- STATE RECLAMATION PLANS

Sec.

- 884.1 Scope.
- 884.2 Objectives.
- 884.11 State eligibility.
- 884.12 Activities eligible for inclusion in State Reclamation Plan.
- 884.13 Content of proposed State Reclamation Plan.
- 884.14 State Reclamation Plan approval.
- 884.15 State Reclamation Plan amendment.
- 884.16 Withdrawal of Plan approval.

AUTHORITY: Secs. 201(c), 402(g)(2), 403, 404, 405, 407, 409 and 412(a), Pub. L. 95-87, 91 Stat. 449, 458, 459, 462, 465, and 466 (30 U.S.C. 1211, 1232, 1233, 1234, 1235, 1237, 1239 and 1242).

### Sec. 884.1 SCOPE.

This Part establishes the procedures and requirements for the preparation, submission and approval of State Reclamation Plans. A State must have an approved State Reclamation Plan to be eligible to administer a State Abandoned Mine Land Reclamation Program under this subchapter and to receive grants for abandoned mine land reclamation projects under 30 CFR Part 886.

### Sec. 884.2 OBJECTIVES.

The objectives of this Part are to encourage maximum participation by the States in the reclamation of eligible land and water through effective use of moneys in the Abandoned Mine Reclamation Fund and to --

(a) Establish uniform guidelines and procedures for preparation and submission of proposed State Reclamation Plans; and

(b) Insure that State Reclamation Plans meet the requirements of Title IV of the Act.

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### Sec. 884.11 STATE ELIGIBILITY.

A State is eligible to submit a State Reclamation Plan if it has eligible land and water as defined in Sec. 874.12 within its boundaries. A State is eligible for a State Reclamation Plan to be approved by the Director if it has an approved State regulatory program under section 503 of the Act and meets the other requirements of this Chapter and the Act.

### Sec. 844.12 ACTIVITIES ELIGIBLE FOR INCLUSION IN STATE RECLAMATION PLAN.

The State Reclamation Plan may provide for any or all of the following activities --

(a) Acquisition and reclamation and restoration of land and water resources adversely affected by past coal mining practices in accordance with the reclamation objectives stated in Sec. 874.13.

(b) Acquisition and filling of voids and sealing tunnels, shafts and entryways and the reclamation of the adverse surface impacts of underground or surface mining for minerals and materials other than coal. The plan shall not, however, provide for reclamation of such land with moneys from the State Fund until all reclamation with respect to coal mining has been accomplished or the Governor of the State has requested and the Director has determined that reclamation is necessary for the protection of the public health and safety under Sec. 874.12(b).

(c) Acquisition of land which is an integral and necessary part of an economically feasible plan to construct or rehabilitate housing under Sec. 879.11(c).

(d) Construction of specific public facilities in communities impacted by coal development. The plan shall not, however, provide for construction of such facilities with moneys from the Site Fund until the Governor of the State has certified, and the Director has concurred, that --

(1) All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

(2) The specific public facilities are required as a result of coal development; and

(3) Impact funds which may be available under the Federal Mine al Leasing Act of 1920, as amended, or the act of October 20, 1976, Pub. L. 94-565 (90 Stat. 2662) are inadequate for such construction.

#### Sec. 884.13 CONTENT OF PROPOSED STATE RECLAMATION PLAN.

Each proposed State Reclamation Plan shall be submitted to the Director in writing and shall include as a minimum the following information:

(a) A designation by the Governor of the State of the agency authorized to administer the State Reclamation Program and to receive and administer grants under 30 CFR Part 886.

(b) An opinion of the State's chief legal officer that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the act, the regulations of this subchapter and the State Reclamation Plan.

(c) A detailed description of the policies and procedures to be followed by the designated agency in conducting the reclamation program including, but not limited to --

(1) The goals and objectives of the State Reclamation Program;

(2) Reclamation project ranking and selection procedures;

(3) Policies regarding the coordination of reclamation work among the State Reclamation Program, the Rural Lands Reclamation Program administered by the Soil Conservation Service and the reclamation programs of any Indian tribes located within the State;

(4) Policies and procedures regarding land acquisition, management and disposal under 30 CFR Part 879.

(5) Policies and procedures regarding reclamation on private land under 30 CFR Part 882;

(6) Policies and procedures regarding rights of entry under 30 CFR Part 877; and

(7) Policies regarding public participation and involvement in the State Reclamation Program.

(d) A detailed description of the administrative and management structure to be used in conducting the reclamation program including, but not limited to --

(1) A description of the organization of the designated agency and of its relationship to other State organizations or officials which will participate in conducting or managing the State Reclamation Program.

(2) A description of personnel staffing policies which will govern the assignment of personnel to the State Reclamation Program.

(3) A description of the purchasing and procurement systems to be used by the agency. Such systems shall meet the requirements of Office of Management and Budget Circular No. A-102, Attachment O.

(4) A description of the accounting system to be used by the agency, including specific procedures for the operation of the State Fund required by Sec. 872.12

(e) A detailed description of the extent of public involvement in the preparation of the proposed State Reclamation Plan. At a minimum, the public shall be given an opportunity to inspect and comment on the proposed plan in the counties having eligible land and water within their boundaries before it is submitted for approval. The comments shall be recorded and considered.

(f) A general description of the reclamation activities to be conducted under the State Reclamation Plan, including as a minimum --

(1) A general description of the known or suspected eligible land and water within the State which require reclamation, including a map showing their general location at a scale of 1:250,000 or larger;

(2) A general description of the problems occurring on the eligible land and water identified on the map and how the plan proposes to deal with each;

(3) A general description of how the land to be reclaimed and the proposed reclamation relates to the existing and planned uses of lands in surrounding areas;

(4) A table summarizing the quantities (e.g. acres, miles) of land and water affected by the problems identified under paragraph (f)(2) of this section and an estimate of the quantities proposed for reclamation during each year covered by the plan;

(5) A general narrative description of the social, economic and environmental conditions prevailing in the different geographic areas of the State where reclamation is planned including, but not limited to --

(i) The economic base;

(ii) The primary sociologic and demographic characteristics;

(iii) Significant esthetic, historic or cultural, and recreational values;

(iv) Hydrology, including any surface or underground water quality or quantity problems associated with past mining;

(v) Flora and fauna, including endangered or threatened plants, fish or wildlife and their habitats;

(vi) Underlying or adjacent beds of commercially mineable coal and other minerals and materials and projected methods of extraction; and

(viii) Anticipated benefits from reclamation.

#### Sec. 884.14 STATE RECLAMATION PLAN APPROVAL.

(a) The Director shall approve, disapprove or otherwise act upon a State Reclamation Plan within 60 days after it is submitted or after a Site Regulatory Program is approved, whichever is later. The Director shall not approve a State Reclamation Plan until he has --

(1) Held a public hearing on the plan within the State which submitted it. The Director may waive the public hearing if he finds that the State has given the public adequate notice and opportunity to comment in public hearings and that the record of such hearings does not reflect major unresolved controversies.

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(2) Solicited and considered the views of other Federal agencies having an interest in the plan.

(3) Determined that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan.

(4) Determined that the proposed plan meets all the requirements of this subchapter.

(5) Determined that the State has an approved State regulatory program.

(6) Determined that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

(b) if the Director disapproves a proposed State reclamation plan, he shall advise the State in writing of the reasons for disapproval. The State may submit a revised proposed State Reclamation plan at any time under the procedures of this section.

#### Sec. 884.15 STATE RECLAMATION PLAN AMENDMENT.

A State may, at any time, submit to the Director a proposed amendment or revision to its approved Plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the State shall include a description of the extent of public involvement in the extent of public involvement in the preparation of the amendment or revision. The Director shall follow the procedures set out in Sec. 884.14 in approving or disapproving an amendment or revision of a State Reclamation Plan.

#### Sec. 884.16 WITHDRAWAL OF PLAN APPROVAL.

(a) The Director shall withdraw approval of a State Reclamation Plan, in whole or in part, if he determines that --

(1) Approval of the State regulatory program has been withdrawn in whole or in part; or

(2) The State is not conducting the State reclamation program in accordance with the Plan or a Reclamation Program Grant Agreement.

(b) If the Director determines that plan approval should be withdrawn, he shall notify the State by mail, return receipt requested, of his proposed action. The notice shall state the reasons for the proposed action. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation, including a hearing if requested by the State, and performance of remedial action prior to the notice of withdrawal of Reclamation Plan approval.

(c) The Director shall notify the State of his decision in writing. The decision of the Director shall be final.

## PART 886 -- STATE RECLAMATION GRANTS

### Sec.

- 886.1 Scope.
- 886.2 Objectives.
- 886.3 Authority.
- 886.4 [Reserved].
- 886.5 Definitions.
- 886.11 Eligibility for grants.
- 886.12 Coverage and amount of grants.
- 886.13 Grant period.
- 886.14 Submission of estimated annual budgets.
- 886.15 Grant application procedures.
- 886.16 Grant agreements.
- 886.17 Grant amendments.
- 886.18 Grant reduction, suspension and termination.
- 886.19 Audit.
- 886.20 Administrative procedures.
- 886.21 Allowable costs.
- 886.22 Financial management.
- 886.23 Reports.
- 886.24 Records.
- 886.25 Disclosure of information.

AUTHORITY: SEC. 201(c), 401 (a) and (c), 402(g), and 412(a), Pub. L. 95-87, 91 Stat. 449, 456, 458, and 466 (30 U.S.C. 1211, 1231, 1232, and 1242).

### Sec. 886.1 SCOPE.

This part set forth procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible land and water and for other activities necessary to carry out the plan as approved.

### Sec. 886.2 Objectives.

The objectives of this part are to assure that adequate information is provided by the State to support its application for a grant and that funds granted to the State are handled in accordance with applicable Federal laws and regulations.

### Sec. 886.3 AUTHORITY.

(a) The Regional Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress and specifically allocated to the State under Sec. 872.11(b)(2). The Regional Director is responsible for assuring that any required approvals by the Director are obtained before the grant is made.

(b) The Director is authorized to approve, or to authorize the Regional Director to approve, additional grants to a State from the moneys available to the Director under Sec. 872.11(b)(5).

### Sec. 886.5 DEFINITIONS.

Agency means the State agency designated by the Governor to administer the State reclamation program and to receive and administer grants under this part.

Sec. 886.11 ELIGIBILITY FOR GRANTS.

A State is eligible for grants under this part if it has a State Reclamation Plan approved under 30 CFR 884.

Sec. 886.12 COVERAGE AND AMOUNT OF GRANT.

(a) An agency may use moneys granted under this part to administer the approved State reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover direct costs to the agency for services and materials obtained from other State agencies or local governments if approved by the Regional Director.

(b) Grants shall be approved for 100 percent of the total agreed upon costs for reclamation of eligible land and water, construction of public facilities, program administration as specified in Sec. 886.21 and the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes.

(c) Grants shall be approved for up to 90 percent of the total agreed upon costs for acquisition of land or interests in land and any mineral or water rights associated with the land. Grants for proposed reclamation projects on these lands shall be approved in accordance with Sec. 886.12(b).

Sec. 886.13 GRANT PERIOD.

The grant funding period shall not exceed 3 years. However, the grant period for administrative costs of the authorized agency shall be for 1 year.

Sec. 886.14 SUBMISSION OF ESTIMATED ANNUAL BUDGETS.

The agency shall cooperate with the Regional Director in the development of advance budget estimates for use by the Director in the preparation of his requests for appropriation of moneys from the Fund. The schedule for such estimates shall be determined by the Director on an annual basis.

Sec. 886.15 GRANT APPLICATION PROCEDURES.

(a) The agency shall submit its grant application to the Regional Director no later than July 1 for funding during the fiscal year commencing October 1. An application for funding during the fiscal year in which a State Reclamation Plan is approved may be submitted with the proposed Plan for approval when the Plan is approved. Office of Management and Budget Circular No. A-95 notification and review requirements shall be fulfilled for each project included in the grant application.

(b) The agency shall use the application format for Federal Assistance Application for Construction Programs and other procedures specified in Office of Management and Budget Circular No. A-102, Attachment M. A preapplication is not required if the total of the grant requested is within the amounts allocated to the State under Sec. 872.11(b)(2).

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(1) Part I of the application shall be a single Standard Form 424 covering all administrative costs and projects included in the grant application. Section IV of the form shall include a listing of the individual projects to be funded. Those individual projects that are part of a multiphased project should include information relative to the scope, magnitude and total costs of the entire project proposed for funding. Program administration cost as specified in Sec. 886.12(a) may be considered as a single project and identified as Program Administration Costs.

(2) Parts II, III, and IV of the application shall be completed for each individual project in accordance with Office of Management and Budget Circular No. A-102.

(i) Complete copies of plans and specifications for projects shall not be required before the grant is

approved. The Regional Director may review such plans and specifications in the agency office or on the project site.

(ii) A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities, and in the decision on how the land will be used after reclamation shall be included in part IV of the application.

(c) The Regional Director shall notify the agency of the status of the application within 30 days after receipt of a complete application. If the application is not approved, the Regional Director shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application.

#### Sec. 886.16 GRANT AGREEMENT.

(a) If the Regional Director approves an agency's grant application, the Regional Director shall prepare a grant agreement which includes --

(1) A statement of the work to be covered by the grant;

(2) A statement of the approvals of specific actions as required under this subchapter or of the conditions to be met before such approvals can be given if moneys are included in the grant for such actions;

(3) The amounts approved for each individual project included in the grant application; and

(4) Allowable transfers of funds to other State agencies.

(b) The Regional Director may allow an agency to assign functions and funds to other State agencies. The Regional Director shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds and reporting.

(c) The Regional Director shall transmit four copies of the grant agreement by mail, return receipt requested, or by hand to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 weeks after receipt, or within an extension of time granted by the Regional Director.

(d) The Regional Director shall sign the agreement upon its return from the agency or when funds are available for the grants, whichever is later, and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds at the time the Regional Director signs the agreement.

(e) Neither the approval of the grant application nor the award of any grant shall commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

#### Sec. 886.17 GRANT AMENDMENTS.

(a) A grant amendment is a written alteration of the amount, terms, conditions, budget, time, administrative, technical, financial or other provisions of the grant agreement, whether accomplished on the initiative of the agency or the Regional Director.

(b) The agency shall promptly notify the Regional Director in writing of events or proposed changes which may require a grant amendment. At a minimum, the agency shall notify the Regional Director in advance of --

(1) Planned changes in the scope or objective of any individual project, whether or not the change will result in a change in the total cost for the project.

(2) Changes will result in an increase or decrease in the total cost of any individual project of more than \$5,000 or 5 percent of the budgeted amount, whichever is greater. Changes of lesser amounts may be made by the agency without advance notification or approval if the change can be made within the total grant to the agency and does not involve a change in the scope or objective of the projects involved.

(c) The Regional Director shall notify the agency of the status of each proposed amendment within 30 days of receipt thereof. The procedures of Sec. 886.16 shall be followed.

#### Sec. 886.18 GRANT REDUCTION, SUSPENSION, AND TERMINATION.

(a) Conditions for reduction, suspension, or termination.

(1) If an agency violates the terms of a grant agreement or an approved Reclamation Plan, the Regional Director may reduce, suspend, or terminate the grant.

(2) If an agency fails to expend moneys allocated and granted within 3 years from the date of allocations, the director may reduce the grant in accordance with Sec. 872.11(b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under Part 735 of this Chapter is terminated, the Regional Director shall terminate the grant awarded under this Part.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Regional Director shall terminate the grant

(i) Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252 (42 U.S.C. 2000d-1). Nondiscrimination in federally assisted programs, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 41 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in federally assisted programs.

(5) If an agency fails to enforce the financial interest provisions of Part 705 of this Chapter, the Regional Director shall terminate the grant.

(6) If an agency fails to submit reports required by this subchapter or Part 705 of this Chapter, the Regional Director shall terminate the grant.

(b) Grant reduction, suspension, and termination procedures.

(1) The Regional Director shall give at least 10 days written notice to the agency by mail, return receipt requested, of intent to reduce, suspend or terminate a grant. The Regional Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Regional Director shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Regional Director shall notify the agency of the termination, suspension, or reduction of the grant in writing by mail, return receipt requested.

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(4) Upon termination, the agency shall refund or credit to the Fund that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet contractual commitments made prior to the effective date of termination shall be retained by the agency.

(5) Upon notification of intent to terminate the grant the agency shall not make any new commitments without the approval of the Regional Director.

(6) The Regional Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-4.

(c) Appeals. (1) Within 30 days of the Regional Director's decision to reduce or terminate a grant, the agency may appeal the decision to the Director.

(2) The agency shall include in the appeal --

(i) A statement of the decision being appealed; and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(2) The Director shall act upon appeals within 30 days of their receipt. The decision of the Director shall be a final decision by the Department of the Interior.

#### Sec. 886.19 AUDIT.

The agency shall arrange for independent audit at least once every 2 years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, Functions published by the Comptroller General of the United States and audit guides provided by the Department of the Interior.

#### Sec. 886.20 ADMINISTRATIVE PROCEDURES.

The agency shall follow administrative procedures governing accounting, payment, property and related requirements contained in Office of Management and Budget Circular No. A-102.

#### Sec. 886.21 ALLOWABLE COSTS.

(a) Reclamation project costs which shall be allowed include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs and up to 90 percent of the costs of the acquisition of land.

(b) The Regional Director shall determine costs which may be reimbursed according to Federal Management Circular 74-4.

(c) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement.

(d) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(e) Costs must not be allocated or included as a cost of any other federally assisted program.

Sec. 886.22 FINANCIAL MANAGEMENT.

- (a) The agency shall account for grant funds in accordance with requirements of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.
- (b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.
- (c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.
- (d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.
- (e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

Sec. 886.23 REPORTS.

- (a) The agency shall, for each grant made under this Part, submit annually to the Regional Director a Financial Status Report in accordance with Office of Management and Budget Circular No. A-102, Attachment H.
- (b) The agency shall, in each year after the first grant, submit to the Regional Director, no later than September 1, a performance report prepared according to Office of Management and Budget Circular No. A-102, Attachment H. The report shall include

- (1) For each project previously funded and completed during the year, a brief description of the project and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed, and a summary of achieved benefits.

- (2) For each project previously funded but not yet completed, a brief description of the project and the status of reclamation work, the project location, landowner's name, and a summary of expected benefits.

- (3) For any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land.

- (4) For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

- (c) The reports required under this section shall reflect revenue deposited in the State Abandoned Mine Reclamation Fund under Sec. 872.12.

Sec. 886.24 RECORDS.

- (a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly --

- (1) The amount and disposition by the agency of all assistance received for the program.

- (2) The total direct and indirect costs of the program for which the grant was awarded.

- (b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents,

papers, maps, and records which are pertinent to a specific grant award.

## PART 888 -- INDIAN RECLAMATION PROGRAM

Sec.

888.1 Scope.

888.2 Objectives.

888.11 Interim procedures.

AUTHORITY: Secs. 201(c), 405(k), 412(a), and 710, Pub. L. 95-87, 91 Stat. 449, 460, 466, and 523 (30 U.S.C. 1211, 1235, 1242, and 1300).

### Sec. 888.1 SCOPE.

This part is reserved for any additional or unique regulations that may be required as a result of the special study report submitted pursuant to section 710 of the Act and to achieve the purpose of the Act on Indian lands. Because of the special jurisdictional status of Indian lands, general responsibilities for administration of Indian Reclamation Programs are set forth on an interim basis.

### Sec. 888.2 OBJECTIVES.

(a) The objectives of this part are to provide a temporary vehicle for mitigation of emergency situations or extreme danger situations arising from past mining practices and to begin reclamation of other areas determined to have high priority on Indian lands.

(b) Upon completion of the special study report and enactment of any required legislation, this Part will be either deleted and supplemented by the other Parts of this chapter dealing with State and Indian Abandoned Reclamation Programs or expanded as required to achieve the purposes of the Act.

### Sec. 888.11 INTERIM PROCEDURES.

{49952}

(a) The Regional Director is authorized to receive proposals from Indian tribes for projects which should be carried out on Indian land and to carry out such projects pursuant to 30 CFR Parts 872 through 882.

(b) The Regional Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian land on all reclamation activities carried out on Indian land under this subchapter.

(c) If a proposal is made by an Indian tribe and approved by the Regional Director, the tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to the Indian tribe under Sec. 872.11(c)(3).

(d) Approved projects may be carried out directly by the Regional Director or through such arrangements as the Regional Director may make with the Bureau of Indian Affairs or other agencies.

[FR Doc. 78-30002 Filed 10-24-78; 8:45 am]

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