

**FEDERAL REGISTER: 45 FR 58006 (August 29, 1980)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 886

Abandoned Mine Land Reclamation Program

ACTION: Final rule.

**SUMMARY:** The final rule amends Section 886.12 of OSM's Abandoned Mine Land Reclamation Program Regulations, and implements the President's Executive Order, E.O. 12185, on conservation of petroleum and natural gas that was published in the Federal Register on December 19, 1979 (44 FR 75093). The action encourages States receiving financial assistance for public facilities constructed with funds from the Abandoned Mine Reclamation Fund to use energy sources other than petroleum or natural gas. The intent is to conserve petroleum and natural gas, not prohibit their use. Project proposals for public facilities will be evaluated by using the reclamation project evaluation factors in 30 CFR 874.14. These factors should be sufficient to insure that energy efficiency and cost effectiveness are included in the project design.

EFFECTIVE DATE: September 29, 1980.

FOR FURTHER INFORMATION CONTACT: Charles A. Beasley, Assistant Director, Abandoned Mine Lands, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240, 202-343-4012.

**SUPPLEMENTAL INFORMATION:**

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, (30 U.S.C. 1201 et seq.), establishes an Abandoned Mine Reclamation Fund and provides the authority to use monies from this fund to reclaim and restore land and water resources adversely affected by past mining. Lands and water eligible for reclamation under this authority are those which were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibility under State or other Federal laws. OSM published final rules on October 25, 1978 (43 FR 49932) which established the abandoned mine land reclamation program and procedures for administering Title IV of SMCRA.

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, which include the construction of public facilities, 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.

Executive Order 12185 requires Federal agencies to review their financial assistance programs and make appropriate regulatory changes to those provisions that could conserve petroleum or natural gas. OSM has determined that petroleum and natural gas could be conserved by encouraging States to use on-site energy sources other than petroleum or natural gas for public facilities.

On May 7, 1980, the Department of the Interior proposed a rule to implement E.O. 12185 and invited public comment on it (45 FR 30382). The rule adopted today is based on that proposed rule. This rule encourages States requesting financial assistance for public facilities projects under their reclamation programs of Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, to seriously consider the use of on-site energy sources other than petroleum or natural gas.

Under State reclamation programs of Title IV, public facilities affected by past coal mining practices that occurred before August 3, 1977, may be eligible for Federal assistance.

For example, schools or public utilities affected by past coal mining could be considered. Facilities necessary to control the adverse effects of past coal mining may also be considered. An example would be a plant for control and treatment of water pollution resulting from mine drainage.

Funding under certain conditions can be provided for public facilities in communities impacted by coal development under Section 402(g)(2) of SMCRA. However, funding is prohibited until conditions related to past coal and noncoal

mining are corrected, or until funds are obligated to cover the costs of this reclamation.

On-site energy sources refer to primary energy that is actually consumed or used by the facility. Only those facilities that are designed to use petroleum or natural gas on-site for major heating systems, cooling systems, or power generation during the operational phase of the facility will be affected by the rule. When the costs for petroleum and natural gas are considered along with the shortages of these energy sources, prudent design of such facilities, regardless of this rule, should restrain their use.

## COMMENTS

OSM received comments from one commenter on the proposal. The comments were very carefully considered by OSM and are discussed below.

1. The commenter stated that the President's Executive Order 12185 authority is derived from Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620. OSM does not accept this statement. While this is one authority, Section 301 of Title III of the United States Code provides the President with ample authority to direct Federal agencies to use the statutory provisions establishing their assistance programs to implement measures to conserve petroleum and natural gas. OSM's proposal does not conflict with the statutory provisions that established Federal assistance for the State reclamation programs, nor does it conflict with the Pub. L. 95-620.
2. The commenter pointed out that Section 403(b) of Pub. L. 95-620 mandates Federal agencies to promote the conservation of petroleum and natural gas through their assistance programs, but does not prohibit the use of these fuels. OSM agrees with this statement.
3. The commenter stated that even the mandatory fuel switching provisions of Pub. L. 95-620 do not apply to stationary electric generating units with input design capacity of less than 100 million Btu's per hour or to fuel burning installations of the same Btu's per hour capacity, and that Congress did not intend that facilities with fuel input design capacity less than 100 million Btu's be subject to fuel switching orders. OSM agrees. The proposal does not prohibit the use of petroleum or natural gas in these smaller facilities. It merely encourages States to consider other forms of on-site energy.
4. The commenter felt that from a practical application the proposal would limit the designer's on-site fuel choices. OSM disagrees. If it is not technologically or economically feasible to use other on-site energy, OSM would surely provide the necessary Federal assistance. However, approval of Federal assistance for the construction phase of the facility does not guarantee Federal assistance for energy costs. Federal assistance is requested on a Federal fiscal year basis after the State's reclamation plan is approved. The approval for requested assistance is dependent on availability of funds and their intended use. Since the monies to support these requests are derived from reclamation fees that are imposed on coal production, and since the authority to collect these fees ends 15 years after the enactment date (August 3, 1977) of the Surface Mining Control and Reclamation Act of 1977, the States will need to consider alternate methods to pay for future energy costs. Therefore, long range planning is necessary for any public facilities that use energy. {58007}
5. The commenter urged that the proposal be modified by: (1) Deleting the phrase "To the extent technologically and economically feasible," and (2) adding a new paragraph that would totally exempt facilities with individual input design capacity below 100 million Btu's per hour or aggregate input design capacities less than 250 million Btu's per hour from the proposed rule. These modifications have not been accepted. The technological and economical considerations are of primary importance in any activity under the Title IV program. Since Federal assistance may not be available for public facility energy costs in the future, these considerations are of utmost importance. The second modification attempts to intertwine the mandatory conversion definition language of Pub. L. 95-620 with the proposed rule. OSM fully intends to comply with Pub. L. 95-620 when applicable. However, the proposal does not prohibit the use of petroleum and natural gas for on-site energy. It does encourage the States to conserve petroleum and natural gas by prudent design and long term planning. Note. -- The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292, et seq. (December 13, 1978).

The Department of the Interior has determined that this action will not have a significant effect on the human environment and an environmental impact statement will therefore not be prepared.

## STATEMENT OF AUTHORSHIP

The primary authors of this document are George L. Williams, Abandoned Mined Lands, Office of Surface Mining and Chris Warner, Office of the Solicitor, Division of Surface Mining, Department of the Interior. Under authority of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, and Executive Order 12185, a revised Section 886.12 is set out below.

Dated: August 12, 1980.

Joan M. Davenport, Assistant Secretary, Energy and Minerals .

## AMENDMENT

30 CFR 886.12(b) is revised to read in its entirety as follows:

### **SECTION 886.12 - COVERAGE AND AMOUNT OF GRANTS.**

(b) Grants shall be approved for 100 percent of the total agreed upon costs for reclamation of eligible lands and water, construction of public facilities, program administration as specified in Section 886.21 and the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes. To the extent technologically and economically feasible, public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds should utilize fuel other than petroleum or natural gas.

[FR Doc. 80-26502 Filed 8-28-80; 8:45 am]

BILLING CODE 4310-05-M