

FEDERAL REGISTER: 43 FR 17918 (April 25, 1978)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 840, 841, 843, 845, 846, 850, 852, 855

Abandoned Mine Land Reclamation Program Provisions; Proposed Rules

ACTION: Proposed rules.

SUMMARY: The regulations added to this Chapter by these parts establish 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 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.

DATES: Comments must be received by June 26, 1978. Public hearings will be held starting at 9 a.m. on May 22, 1978, in Denver, Colo.; May 25, 1978, in St. Louis, Mo.; and June 1, 1978, in Washington, D.C.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240. Public hearings will be held at the Department of the Interior Auditorium, 18th & C Streets NW., Washington, D.C.; Wyer Auditorium, Denver Public Library, 1357 Broadway, Denver, Colo.; and Federal Building Auditorium, 405 South 12th Street, 12th & Spruce Streets, St. Louis, Mo.

FOR FURTHER INFORMATION CONTACT: M. Richard Nalbandian, Chief, Division of Reclamation Planning and Standards, Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, 202-343-4057.

SUPPLEMENTARY INFORMATION:

The Surface Mining Control and Reclamation Act of 1977 (Act), Pub.L. 95-87, requires the Secretary of the Interior to publish regulations implementing an 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 proposed 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 for 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.

The public is urged to comment on these proposed regulations. The Office of Surface Mining Reclamation and Enforcement believes that full public participation in the rulemaking process will improve the quality of its Abandoned Mine Land Reclamation Program. The Office reserves the right to limit the time allotted for individual presentations during the public hearings but will give equal consideration to written materials supplementing such oral presentations.

These regulations are proposed pursuant to the authority of Sections 201(c) and 412(a) of the Act (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). A brief discussion of the parts and major sections of the proposed regulations follows:

Part 840 sets forth general responsibilities for administration of abandoned mine reclamation funds to finance the programs. It defines source and use of moneys deposited in the Funds and responsibility of Federal, State agencies and Indian tribes in the conduct of the program.

Part 841 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 843 sets forth procedures for entry on land by the Office, 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 reform necessary reclamation work.

Part 845 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 acquiring lands.

Part 848 authorizes reclamation activity on private land after the procedures under part 843 have been met. Sections 848.12-14 establish procedures for the recovery of the cost of reclamation on privately-owned land.

Part 850 establishes requirements and procedures for the preparation, submission and approval of State Reclamation Plans. Sections 850.15 and 850.16 contain provisions for amendments to State Plans or withdrawal of Plan approval.

Part 852 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 855 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 of otherwise high priority for reclamation activities.

ABANDONED MINE RECLAMATION FUNDS

Part 840 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.

Section 840.4(b) assigns responsibility to Regional Directors of the Office to consult with Indian tribes to develop an orderly approach to reclamation until such time as the study required by Section 710 of the Act is completed. This section is consistent with proposed Part 855 and Sections 405(c) and 710 of the Act which, at this time, do not authorize the approval of an Indian Reclamation Plan. For a further explanation, see the discussion under Indian Reclamation Program below.

Section 840.5(b) defines "emergency." This definition establishes the basis for the Office to use the emergency powers of Section 410 of the Act to enter on private property to do reclamation work. The alternative to requiring a formal declaration of an emergency or disaster before the powers of Section 410 are used is not considered appropriate in light of Congressional intent expressed in the Act and the legislative history to act expeditiously in emergency situations. Such declarations generally apply to larger areas or regions than may be required or eligible for reclamation activities under the Abandoned Mine Land Reclamation Program. [Page 17919]

Section 840.5(c) defines "extreme danger." This definition identifies work which is to be carried out first. The definition has been somewhat harrowed by requiring that persons or improvements to real property be currently exposed to considerable physical harm for the danger to be extreme. The alternative of requiring only a reasonable expectation of considerable physical harm to persons or property does not provide the degree of distinction necessary for setting priorities. The definitions of "Imminent danger to the health and safety of the public" and of "Significant, imminent environmental harm to land, air or water resources" found in 30 CFR 700.5 are not considered appropriate for the determination of "extreme dangers" in the Abandoned Mine Land Reclamation Program since almost any area subject to treatment under the Program might meet one or both of the conditions they defined under those phrases.

Sections 840.11(b)(2) and (b)(3) indicate the time when "allocation" of revenues to States and Indian tribes will occur. The proposed rules are intended to maximize the span of time during which States and Indian tribes with approved Reclamation Plans can obtain grants from their allocation. The three-year period provided in Section 402(g)(2) of the Act for expenditure of allocated moneys by States or Indian tribes would be extended under the proposal, if moneys had been granted during the three years and were still required for the program for which they were granted. Finally, provisions are included to avoid allocation of moneys to a State or Indian tribe which has declared its intent not to develop an approved

program. These provisions are needed to prevent freezing of moneys for three years when those moneys may be required to carry out needed reclamation elsewhere.

A variety of alternatives to the ones selected were considered in developing these sections. The first alternative considered was to begin allocation of fees to States or Indian tribes at the time those fees were received, i.e., within 30 days from the end of the calendar quarter in which the fees were due. This approach, however, would actually shorten the time available to States or Indian tribes for use of allocated moneys during the early years of the Program because a greater portion of the three years would run concurrently with the time required for program development.

The second alternative examined was to begin allocation of fees only after a Reclamation Plan had been approved. This option would assure a full three years for use but would provide no start-up balance for a State or Indian tribe upon initial plan approval.

Two alternatives focused attention on the time for expenditure of moneys after a grant has been made to a State or Indian tribe from their respective allocations. The first would have required expenditure (i.e., the payment of cash) of granted moneys within three years of the date of allocation. This approach might stimulate faster use of grant moneys but it may prevent the use of longer term contracts which might be desirable. The second alternative would have required only that a grant be made within three years after the allocation is made. This approach contrasts with the proposed rule which provides that moneys allocated and granted must be expended within three years from the date of allocation. Although such an approach would increase the flexibility of States or Indian tribes to program allocated moneys, it was rejected because it would substantially compromise Congress' intent that reclamation Fund moneys be used expeditiously.

Sections 840.12(b)(2) and 840.13(b)(2) authorize the deposit of use charges in State or Indian Abandoned Mine Reclamation Funds in accordance with Section 401(b)(2) of the Act. Reports on the use of these receipts are required under proposed Part 852. The alternative of requiring such receipts to be deposited in the national fund might result in more control over their use by the Office but would create additional accounting complexities that are not considered necessary. This approach is also consistent with Congress' intent to give States responsibility and authority to implement a reclamation program for eligible land and water under their jurisdiction.

GENERAL RECLAMATION REQUIREMENTS

Part 841 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 proposed at this time because a more extensive review is required to define specific national standards which are appropriate for the disparate rehabilitation activities to be conducted. Comments on the nature and content of standards which should be developed are requested.

Section 841.12(a)(3) defines "abandoned" as used in Section 404 of the Act to mean there is no continuing responsibility for reclamation under State or Federal law. It is recognized that both the word and the definition given it are used in Section 404. Consideration was given to defining "abandoned" to mean that no legal owner could be identified. This meaning would be inconsistent with other provisions of Title IV relating to owner consent, liens and land acquisition. The present definition provides an ascertainable standard consistent with the Act.

Section 841.12(c) defines "inadequately reclaimed" in terms of continuing degradation to the environment, damage to the use of resources or danger to health and safety. Consideration was given to defining the term to include any site not reclaimed to the standards of Section 515 and Section 516 of the Act. Such a definition would encompass many sites which are no longer creating problems as a result of natural renovation. The narrower definition places appropriate constraints on the areas to be reclaimed with the limited moneys that will be available over the life of the Fund.

Section 841.12(b) establishes eligibility requirements for reclamation of land and water affected by past noncoal mining activities. This section incorporates the provisions of Section 409 of the Act and, when read with Section 841.12(a), establishes eligibility priorities consistent with Sections 404 and 409(c) of the Act.

Section 841.13 incorporates the objectives and priorities of Section 403 of the Act. The section interprets the priorities as applying to competing projects, i.e., those which could be undertaken at any given time with money available at

that time. An alternative interpretation would be that all projects meeting the highest priority nationwide, or statewide, must be completed before projects in the next priority are undertaken. Such an interpretation could delay any work on desirable objectives for years and effectively make the lower priority objectives stated by Congress meaningless because money would never be assigned to them.

Section 841.14 establishes a minimum list of factors to be considered in selecting, assigning priorities to and evaluating reclamation projects. Neither a ranking order nor weights or values are assigned to the factors. The importance assigned each factor would be left to the State, Indian tribe or Federal office carrying out the reclamation activities. Alternatives of assigning strict values to the factors or of limiting the section to general guidelines on how ranking should be accomplished were considered. The first of these is deemed unresponsive to potentially unique program needs of individual States or Indian tribes. The second fails to give a meaningful basis for national program management and evaluation.

RIGHTS OF ENTRY [Page 17920]

Part 843 establishes procedures for entry on private lands for purposes of study or exploratory work, and reclamation. The proposed 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.

Section 843.11 requires a written consent which includes a legal description of the lands to be entered and the nature of the work to be performed. Consideration was given to accepting oral consent which would provide almost no protection to those entering on the land. A less restrictive requirement for describing the land to be entered was considered but this would diminish the protection offered to both the owner and those entering on the land.

Sections 843.12(b) and 843.13(c) each require 30 days' advance notice of a proposed entry. Each section also requires posting of the notice on the property and publication once in a newspaper of general circulation if the owner is unknown. A variety of shorter or longer notice times and alternative posting or publication requirements were considered. The proposed rules provide reasonable minimum requirements for notice when consent cannot be obtained and entry is in the interest of the public health, safety and welfare.

Section 843.14 incorporates the provisions of Section 410 of the Act for entry without notice to correct an emergency situation. Consideration was given to requiring consent or some limited form of notice prior to entry. While consent or prior notice is desirable, the delays which could be involved are likely to be inconsistent with the need to take rapid action to abate an emergency where the public health, safety or general welfare is at stake.

ACQUISITION, MANAGEMENT AND DISPOSITION OF LAND AND WATER

Part 845 reflects several provisions of Title IV of the Act for acquisition, use and disposal of land and water. For the convenience of reviewers, the following table reflects the primary authority in the Act for selected provisions of this Part.

Section of proposed rules	Section of the Act
845.11(a)	407(c)(1) and (2) and 407(f)
(b)	407(c)(3) and 407(f)
(c)	407(h)
(d)	409(e)
845.12(c)	407(c)
(d), (e) and (f)	407(d)
845.13	407(c) and 409(e)
845.14	407(f)
845.15(a)	407(g)(2)
(b) and (c)	412(b)
(d) and (e)	407(e)
(f)	407(h)
(g)	407(g)(i)

Sections of the regulations not specifically identified in the above table, as well as some portions of the sections identified, are proposed 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.

Section 845.11(e) includes a proposed policy which would restrict the acquisition of interest in land or water to only those interests necessary for reclamation or post-reclamation land use. This policy will help assure that excessive moneys are not tied up in real estate holdings. The alternative to this policy would require that full interests, including severable interests, be acquired for each project. It should be noted that the United States and its agencies are not bound by State law in acquiring severable interests in land. However, the section expresses a strong preference for following State law or local custom during acquisition to avoid title problems at the time of sale.

Sections 845.12(b) and (c) state a policy preference for acquisition from a willing seller instead of acquisition by condemnation. Consideration was given to establishing more detailed requirements for seeking a willingness to sell before the start of condemnation procedures. Such procedures do not seem necessary because reason will dictate diligent efforts to acquire by purchase before cumbersome and costly condemnation procedures are started.

Sections 845.12(e), (f) and (g) state how title to interests in land acquired by the Office, State or Indian tribe shall be held. When authorized by law, title to interests in land acquired by an Indian tribe will be held in the name of the United States in trust for the benefit of the Indian tribe.

Section 845.13 provides for acceptance of offers of donations of land or interest in land even if the land is not free and clear of encumbrances. It is reasoned that the encumbrances may not preclude necessary reclamation work and if they do preclude such work it is likely that the cost of removing the encumbrance would be less than purchase of the land. The gift need not be accepted if neither of these conditions is true or if the encumbrance is otherwise unacceptable. The major alternative considered was to require a free and clear title to all gifts accepted which could serve to foreclose some desirable gifts.

Section 845.14(b) establishes a general requirement for use fees which could be waived by the Regional Director of the Office. It also provides broad options for determining the amount of fees to be charged. Alternatives of charging fees only for uses which would result in financial gain or charging fees only when it is in the "public interest" were considered. The first of these is too narrow while the second is so broad that the results would be unpredictable.

Section 845.15(a) establishes requirements for public notice, public hearing and written findings prior to any disposition of lands acquired under this part. The Act in Section 407(g)(1) requires such procedures only for disposal through a public sale. The additional requirements are considered desirable to assure broad public involvement in all phases of the Abandoned Mine Land Reclamation Program.

Sections 845.15(b) and (c) authorize the Office, a State or an Indian tribe to assign administrative responsibility for acquired lands to other governmental agencies. This authorization is intended to facilitate assignment of lands to organizations best qualified to manage them according to the purposes for which they were acquired. The alternative of not providing such an authorization could require reclamation agencies to become extensively involved in land management at the expense of their primary missions.

Sections 845.15(b), (c), (e) and (f) each require that agreements to dispose of land include provisions for return of the land to the acquiring agency if, at any time, it is no longer required for the purposes specified in the agreement. Section 407(e) of the Act requires such provisions specifically for disposal under Section 845.15(e). Broader application of the requirement is deemed appropriate to assure that the specific and limited authorizations for acquisition granted by the Act are not, in fact, violated through subsequent disposal actions.

RECLAMATION ON PRIVATE LANDS

Part 848 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 proposed 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. [Page 17921]

Section 848.12 requires appraisals of the fair market value of private land in accordance with the handbook on *Uniform Appraisal Standards for Federal Land Acquisitions* (Interagency Land Acquisition Conference, 1973). This requirement is considered necessary to support (1) a decision on whether or not a lien should be filed and (2) the lien, if one is filed. It is considered desirable in all cases for purposes of evaluating program results. The alternative of requiring appraisals only when it is likely that a lien would be filed would be less costly but would not provide needed information for effective program evaluation and could result in inadequate information for subsequent filing of a lien. It is also noted that the costs of reclamation offset any claims of alleged damage by virtue of entry under Sections 407 and 410 of the Act and Part 843 of these proposed rules.

Section 843.13 would require that a lien be filed if reclamation results in an increase in fair market value. A general exception to this requirement, consistent with Section 408 of the Act, applies if the surface owner acquired the land before May 2, 1977, and did not benefit from the mining. Two other exceptions are authorized where (1) it is determined that the cost of filing a lien exceeds the increase in fair market value of the property after reclamation and (2) the Director waives the lien in return for the owner's dedication of the land or an interest in the land for a valid public use for a specific period of time. The alternatives of requiring liens in all cases not exempt under Section 408 was considered. This alternative was rejected because in some circumstances it may be inappropriate to file a lien if the purpose of Section 408 of the Act (to avoid windfall profits) would not be served or a greater public benefit could be achieved. Alternatives also were considered which would make the lien optional with the reclamation agency or which would establish different criteria for waiving the lien. The first of these is highly susceptible to abuse and the second may produce results that would be inconsistent with the intent of Congress to avoid windfall profits.

Each of the two administrative exceptions to requiring a lien is also consistent with the Congressional intent to avoid windfall profits. Either there would be no windfall involved or the increase in fair market value would be pro-rated over an appropriate dedication period during which time the benefits of reclamation would inure to the public. The exceptions proposed are based, in part, on successful experiences of the State of Pennsylvania and are deemed reasonable at this time. Comments on alternative criteria are solicited.

Section 848.14 establishes the requirement, also consistent with Congress' intent to deter windfall profits, that liens shall be satisfied within five years of the date of filing or action to execute the lien shall commence.

STATE RECLAMATION PLANS

Part 850 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.

Section 850.12 permits the inclusion of non-coal reclamation activities in the State plan when it is first submitted. Including of such activities in the plan should facilitate longer range program planning and avoid the potential need for earlier or more frequent amendments. The alternative of excluding non-coal activities from the plan was considered inappropriate because in some cases, a State may have limited amounts of land disturbed by coal mining in the past and, in other cases, serious health and safety hazards resulting from non-coal mining may require work before all coal mined lands are reclaimed.

Section 850.13 includes proposed requirements regarding the format and detail of State Reclamation Plans. A variety of alternatives to these requirements might be proposed ranging from a very loose set of objectives to much more stringent and detailed requirements (e.g., specific site location and hazard data). A less stringent set of requirements would probably complicate the annual grant process proposed in Part 852. More stringent requirements could become counterproductive if they resulted in delays in meeting State programs or caused States to reject the role given them by the Act. The Office believes that the proposed requirements are reasonable and consistent with its stewardship responsibilities under Title IV of the Act.

Specific comments are requested on the paperwork and reporting burden this section would place on States. The Office solicits comments on how the burden can be reduced while meeting the requirements of the Act. The office also welcomes information about any duplication between the requirements in Section 850.13 and other Federal reporting requirements. These comments will be provided to GAO as part of the clearance process required under Section 201(e) of the Act and Sections 3502 and 3512 of Title 44, United States Code.

Section 850.13(c)(3) requires the States to describe its policies and procedures regarding coordination of reclamation work with the Soil Conservation Service and any Indian tribes within the State. This proposal will probably result in differing coordination mechanisms and procedures in different States and is believed to be most consistent with State leadership of the overall reclamation program. Some consideration has been given to defining specific coordination mechanisms on a nationwide basis. However, specific national mechanisms could interfere with viable organizational arrangements in the various States and are therefore deemed unnecessary.

Section 850.14(a)(1) requires the Director to hold a public hearing within the State before he approves the plan, unless the State planning process included a hearing which provided adequate public notice and opportunity to comment on the proposed plan and the record of the hearing does not reflect major unresolved controversies. The objective of this proposed rule, in conjunction with Section 850.13(e), is to insure meaningful public participation in the development of the State Reclamation Program. The Office believes that such participation was a clear intent of Congress as reflected in many sections of the Act and is also consistent with the requirements of the National Environmental Policy Act. Comments on alternative participation requirements are solicited.

STATE RECLAMATION GRANTS

Part 852 includes procedures and requirements for annual grants to States to conduct reclamation activities under their approved Reclamation Plans. Grant applications would 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 (Parts 725 and 740) with one major exception: Grant applications would 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 described in the proposal.

Section 852.3(b) authorizes the Director to approve grants to a State in excess of the amounts previously allocated and, therefore, available to the State. Such grants are authorized by Section 402(g)(3) of the Act. Consideration was given to reserving all moneys, above the amounts allocated, for use on direct programs of the Office. While specific conditions under which such grants would be made have not been proposed, the Office believes it desirable to retain the flexibility of doing so on a case-by-case basis where an additional grant is the expeditious method for getting work done. [Page 17922]

Section 852.15 proposes content and format requirements for annual grant applications. To a significant extent these requirements are established by OMB Circular A-102. The limited variations proposed include deletion of the Circular's requirement for advance submission of plans and specifications because such a requirement is not allowed under Section 405(i) of the Act. Comments regarding additional, specific variations from the requirements or format of OMB circular A-102 are solicited.

Specific comments are requested on the paperwork and reporting burden this section would place on States. The Office solicits comments on how the burden can be reduced while meeting the requirements of the Act and identification of any duplication between the section and other Federal reporting requirements. These comments will be provided to GAO as part of the clearance process required under Section 201(e) of the Act and Sections 3502 and 3512 of Title 44, United States Code.

Section 852.15(b)(2)(ii) requires a description of the public involvement obtained or planned for each project. This requirement is not a part of the requirements of OMB Circular A-102. The requirement is proposed as a reflection of the intent of Congress that the public should participate in the development of reclamation objectives and plans. More stringent requirements such as detailed procedures to be followed in obtaining public comment could be stated and may be necessary. The degree of public involvement required in the development and approval of State Reclamation Plans and in decisions regarding disposal of reclaimed lands are believed to be adequate at this time.

Section 852.17(b)(2) authorizes States to adjust the budget for individual projects by \$5,000 or five percent without advance approval. Such changes could not involve changes in project scope or objectives. This degree of adjustment is the maximum authorized by OMB Circular A-102 and should provide needed flexibility for State program management. A variety of more restrictive provisions are available, including a requirement that all changes be approved in advance. Such provisions may be unduly burdensome for effective program administration by a State. Furthermore, more restrictions, unless necessary, would be inconsistent with Congress' intent to give States primary program responsibility under Title IV of the Act.

INDIAN RECLAMATION PROGRAM

Part 855 proposes 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). Section 405(c) of the Act prohibits approval or 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. Thus, 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.

The proposal would 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 have been included in the drafting of Parts 840-848 in anticipation of specific legislative authority granting regulatory status to them. If the authorization is the same as for States, Part 855 may be deleted. If the authorization differs from that given States, Parts 840-848 can be appropriately amended and Part 855 may also be amended and expanded. It should be observed, however, that Parts 840-848 do not contain any independent authority for Indian tribes to act beyond that allowed by statute. Part 855 is proposed to provide an administrative vehicle for the Office to begin necessary reclamation activities on Indian lands in accordance with Parts 840-848 when the Indian tribe desires such activity.

ENVIRONMENTAL IMPACTS

The Office has determined, after conducting an environmental assessment of the proposed rules, that regional analyses will be performed on the environmentally significant aspects of the various programs. This approach will be more meaningful because it will ensure that the level of analysis is consistent with the regional operations of the program. The region is the level at which most program decision will be made and most proposals requiring other decisions will be generated. Furthermore, regional analyses will more clearly develop issues relating to the various physio-geographic areas to be impacted by the programs.

An environmental impact statement on the proposed rules is not required under Section 102(2)(c) of the National Environmental Policy Act because they will not have a significant effect on the quality of the human environment. The proposed rules only establish procedures, required by Section 405(g) of the Act, for abandoned mine land reclamation programs. The rules do not propose an action entailing the commitment of resources at this time, but rather establish procedures for the consideration of commitments in the future. However, the Office believes that the cumulative impacts of State and Federal Abandoned Mine Land Programs should be evaluated from an environmental perspective at an early date. Thus, the Office will undertake regional analyses of anticipated environmental impacts of the program once the rules become final. Regional analyses and environmental impact statements will be developed under the supervision of the Division of Reclamation Planning and Standards, Abandoned Mine Land Program. This Division will coordinate the development of format and content in order to permit interregional comparisons and to provide a national focus.

The Office invites comments to help identify issues and aspects of the program considered to be of significant environmental concern that should be addressed in these environmental analyses.

DRAFTING INFORMATION

The principal authors of these proposed regulations are Daniel Jones, Bureau of Mines; Don O'Bryan, Environmental Protection Agency; Paul Reeves, Ray Booker, and Richard Nalbandian, 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.

NOTE. - The Department of the Interior has determined that this document does not contain a proposal having major economic consequences which would require a regulatory analysis under Executive Order 12044.

Dated: April 24, 1978.

JOAN M. DAVENPORT, *Assistant Secretary, Energy and Minerals.* ant Secretary, Energy and Minerals.
[Page 17923]

It is proposed to add Parts 840, 841, 843, 848, 850, 852 and 855 to Title 30, Chapter VII to read as follows:

PART 840 - ABANDONED MINE RECLAMATION FUNDS

Section

840.1	Scope.
840.2	Objectives.
840.3	[Reserved]
840.4	Responsibilities.
840.5	Definitions.
840.6-840.10	[Reserved]
840.11	Abandoned Mine Reclamation Fund.
840.12	State Abandoned Mine Reclamation Funds.
840.13	Indian Abandoned Mine Reclamation Funds.

AUTHORITY: Sections 201(c) Pub.L. 95-87, 91 Stat. 449(30 U.S.C. 1211) and Section 412(a), Pub.L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

SECTION 840.1 - 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 moneys and use of such moneys to administer the Abandoned Mine Land Reclamation Programs; 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 Reclamation Program are published by the Secretary of Agriculture in 7 CFR Part 632. The Department of Agriculture has identified this program as the Rural Abandoned Mine Program (RAMP).

SECTION 840.2 - 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 Reclamation Funds.

SECTION 840.3 [RESERVED]

SECTION 840.4 - 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 activities under Rural Lands, State and Indian Reclamation Programs conducted with moneys from the Fund and projects carried out by the Office; and
- (5) Consulting with other Federal 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; and
- (7) 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.

SECTION 840.5 - DEFINITIONS.

(a) *The Abandoned Mine Reclamation Fund, or Fund* is a trust fund established on the books of the United States Treasury for the purpose of accumulating revenue designated for reclamation of abandoned mine lands, and other activities authorized by Title IV, Pub.L. 95-87.

(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 an extreme danger which presents a high probability of considerable physical harm to persons, property or the environment 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 which could reasonably be expected to cause considerable 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 established 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 Part 850 of this Chapter.

(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. [Page 17924]

SECTIONS 840.6-840.10 [RESERVED]

SECTION 840.11 - ABANDONED MINE RECLAMATION FUND.

(a) Revenue to the Fund shall include -

- (1) Reclamation fees collected under Section 402 of the Act and Part 837 of this Chapter;
- (2) Amounts collected by the Office from charges for use of land acquired or reclaimed with moneys from the Fund under Part 845 of this Chapter;
- (3) Moneys recovered by the Office through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under Part 848 of this Chapter;
- (4) Moneys recovered by the Office from the sale of lands acquired with moneys from the Fund or by donation under Part 845 of this Chapter; 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 Part 795 of this Chapter.
- (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 reservations 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 within an Indian reservation shall be allocated at the end of the fiscal year in which they are collected for use within that reservation 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 an Indian reservation that have not been granted to the Indian tribe for the reservation 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 pursuant to 7 CFR Part 632.
- (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 reservation under paragraphs (b)(2) or (3) of this section.

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

SECTION 840.12 - 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 Part 852 of this Chapter.

(2) Moneys collected by the State from charges for uses of lands acquired or reclaimed with moneys from the State Fund under Part 845 of this Chapter.

(3) Moneys recovered by the State through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the State Fund under Part 848 of this Chapter.

(4) Moneys recovered by the State from the sale of lands acquired with moneys from the State Fund under Part 845 of this Chapter.

(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 Part 850 of this Chapter.

SECTION 840.13 - 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 Part 845 of this Chapter.

(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 Part 848 of this Chapter.

(4) Moneys recovered by the Indian tribe from the sale of lands acquired with moneys from the Indian Fund under Part 845 of this Chapter.

(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 Part 855 of this Chapter.

PART 841 - GENERAL RECLAMATION REQUIREMENTS

Section

841.1	Scope.
841.2	Objectives.
841.3-841.10	[Reserved]
841.11	Applicability.
841.12	Eligible land and water.
841.13	Reclamation objectives and priorities. [Page 17925]
841.14	Reclamation project evaluation.

AUTHORITY: Section 201(c) Pub.L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Public Law 95-87, 91 Stat. 466 (30 J.S.C. 1242).

SECTION 841.1 - SCOPE.

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

SECTION 841.2 - 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.

SECTIONS 840.3-840.10 [RESERVED]

SECTION 841.11 - 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 840 of this Chapter.

SECTION 841.12 - ELIGIBLE LANDS AND WATER.

(a) Land and water are eligible for reclamation active, ties if -

- (1) They were mined or affected by mining processes before August 3, 1977;
- (2) They were inadequately reclaimed; and
- (3) They were abandoned, in that there is no continuing responsibility on the part of any operator, permittee, or agent of the operator or permittee, or the State as a result of a bond forfeiture, to reclaim them under State or Federal law.

(b) Land 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 reservation in which they are located or the reclamation is necessary for the protection of public health and safety; and
- (4) Moneys allocated to the State or Indian Reservation under Sections 840.11(b)(2) and (3) of this Chapter are available for the work.

(c) For purposes of this section, inadequately reclaimed land means land or water affected by mining or mining processes conducted before August 3, 1977, 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.

SECTION 841.13 - 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.

- (a) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past mining practices.
- (b) Protection of public health, safety, and general welfare from adverse effects of past 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 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 Part 845 of this Chapter, for recreation, and historic purposes, conservation, and reclamation purposes or open space benefits.

SECTION 841.14 - RECLAMATION PROJECT EVALUATION.

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 Section 841.13. Completed reclamation shall be evaluated in terms of the factors set forth below as a means to identify conditions which should be avoided, corrected or improved in plans for future reclamation work. The factors shall include -

- (a) The need for reclamation work to accomplish one or more specific reclamation objectives as stated in Section 841.13.
- (b) 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.
- (c) 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 -
 - (1) Protection of human life, health or safety.
 - (2) Protection of the environment, including air and water quality, fish and wildlife habitat, visual beauty, historic or cultural resources and recreation resources.
 - (3) Protection of public or private property.
 - (4) 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.
 - (5) Improvement of environmental conditions which may be considered to generally enhance the quality of human life.
 - (6) Improvement of the use of natural resources, including post-reclamation land uses which -
 - (i) Increase the productive capability of the land to be reclaimed.
 - (ii) Enhance the use of surrounding lands consistent with existing land use plans.
 - (iii) Provide for construction or enhancement of public facilities.
 - (iv) Provide for residential, commercial or industrial developments consistent with the needs and plans of the community in which the site is located.

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

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

(e) 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.

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

(1) Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or [Page 17926]

(2) 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.

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

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

(i) Additional factors and values as developed by State, Indian or Federal agencies administering reclamation programs and projects.

PART 843 - RIGHTS OF ENTRY

Section

843.1 Scope.

840.2-840.10 [Reserved].

843.11 Consent to entry.

843.12 Entry for studies or exploration.

843.13 Entry for reclamation.

843.14 Entry for emergency reclamation.

AUTHORITY: Section 201(c), Pub.L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub.L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

SECTION 843.1 - 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 performing reclamation work.

SECTIONS 840.2-840.10 [RESERVED].

SECTION 843.11 - 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.

SECTION 843.12 - ENTRY FOR STUDIES OR EXPLORATION.

(a) The Office, State or Indian tribe under an approved Reclamation Plan, 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 for 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.

SECTION 843.13 - ENTRY FOR RECLAMATION.

(a) The Office, State or Indian tribe under an approved Reclamation Plan, or their agents, employees or contractors, may enter upon land to perform reclamation 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 stage 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.

SECTION 843.14 - 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.

(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 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. [Page 17927]

PART 845 - ACQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER

Section

845.1	Scope.
845.2-845.10	[Reserved]
845.11	Land eligible for acquisition.
845.12	Procedures for acquisition.
845.13	Acceptance of gifts of land.
845.14	Management of acquired land.
845.15	Disposition of reclaimed land.

AUTHORITY: Section 201(c), Pub.L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub.L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

SECTION 845.1 - 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.

SECTIONS 845.2-845.10 [RESERVED]

SECTION 845.11 - LAND ELIGIBLE FOR ACQUISITION.

(a) Land adversely affected by past coal mining practices may be acquired 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 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.

(b) Coal refuse disposal sites and all coal refuse thereon may be acquired 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 Section 843.14 of this Chapter; or
- (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, any department, agency or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(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 Section 841.12(b) of this Chapter.

(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.

SECTION 845.12 - 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. 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 Reclamation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 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.

SECTION 845.13 - ACCEPTANCE OF GIFTS OF LAND.

(a) The Director in accordance with Department of Justice procedures for the acquisition of real property, or a State of Indian tribe under an approved Reclamation Plan, may accept donations of title to land or interest in land which is necessary for reclamation activities.

(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 under State or Federal 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. [Page 17928]

(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.

SECTION 845.14 - MANAGEMENT OF ACQUIRED LANDS.

(a) Land acquired under this part may be used pending disposition under Section 845.15 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 may waive the fee if he finds in writing that such a waiver is in the public interest.

(c) All use fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with Part 840 of this Chapter, 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.

SECTION 845.15 - 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 four 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 be consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land will revert to the Office if, at any time in the future, deemed appropriate by the Director and he upon a finding 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 lands 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 Section 845.11(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 Section 845.11(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. [Page 17929]

(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. This 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.

(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 Part 840 of this Chapter.

PART 848 - RECLAMATION ON PRIVATE LAND

Section

848.1	Scope.
848.2-848.10	[Reserved].
848.11	Operations on private land.
848.12	Appraisals.
848.13	Liens.
848.14	Satisfaction of liens.

AUTHORITY: Section 201(c), Pub.L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub.L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

SECTION 848.1 - 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.

SECTIONS 848.2-848.10 [RESERVED]

SECTION 848.11 - OPERATIONS ON PRIVATE LAND.

Reclamation activities may be carried out on private land if a consent to enter is obtained under Section 843.11 of this Chapter, or if entry is required and made under Section 843.13 or Section 843.14 of this Chapter.

SECTION 848.12 - APPRAISALS.

(a) An appraisal of the fair market value of all land to be reclaimed shall be obtained in accordance with 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 nonemergency 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 fair market value of the land as reclaimed.

SECTION 848.13 - LIENS.

(a) The Regional Director, State or Indian tribe which performed the reclamation work shall place a lien against land reclaimed if the reclamation resulted in an increase in the fair market value based on the appraisals obtained under Section 848.12.

(1) A lien shall not, however, 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 lien may be waived by the Regional Director, State or Indian tribe 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 Director may waive the lien if he determines in writing that the lien would not be consistent with the purposes for which the reclamation was performed and the owner dedicates the land for a valid public use for an appropriate period of time. The dedication period shall reflect the cost of the reclamation performed and the public use to be made of the land.

(b) The amount of the lien shall be the total of all moneys expended for the reclamation work, but shall not exceed the resulting increase in the fair market value.

(c) A written statement of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under Section 848.12 shall, within six months after completion of the reclamation work, be filed in the Office which has responsibility under local law for recording judgments against land in the county in which the land lies. Such statement shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(d) Within 60 days after the lien is filed, the landowner may proceed as provided by local law to petition for determination of the increase in the market value as a result of the restoration, reclamation, abatement control or prevention of the adverse effects of past mining practices. The increase in value shall constitute the amount of the lien and shall be recorded with the statement filed under paragraph (c) of this section. Any party aggrieved by the decision may appeal as provided by local law.

SECTION 848.14 - SATISFACTION OF LIENS.

(a) The Office, State or Indian tribe which files a lien on private property shall initiate action to execute the lien if it is not satisfied within five years of the date of filing.

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

PART 850 - STATE RECLAMATION PLANS

Section	
850.1	Scope.
850.2	Objectives.
850.3-850.10	[Reserved]
850.11	State eligibility.
850.12	Activities eligible for inclusion in State Reclamation Plan.
850.13	Content of Proposed State Reclamation Plan.
850.14	State Reclamation Plan approval.
850.15	State Reclamation Plan amendment.
850.16	Withdrawal of plan approval.

AUTHORITY: Sections 201(c), Pub.L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub.L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

SECTION 850.1 - 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 Chapter and to receive grants for abandoned mine land reclamation projects under Part 852 of this Chapter.

SECTION 850.2 - 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) Ensure that State Reclamation Plans meet the requirements of Title IV of the Act. [Page 17930]

SECTIONS 850.3-850.10 [RESERVED].

SECTION 850.11 - STATE ELIGIBILITY.

A State is eligible to submit a State Reclamation Plan if it has eligible land and water as defined in Section 841.12 of this Chapter 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.

SECTION 850.12 - 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 Section 841.13 of this Chapter.
- (b) Acquisition and filling of voids and sealing tunnels, shafts and entry ways 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 State Fund until all reclamation with respect to coal mining has been accomplished or the Director has determined that reclamation is necessary for the protection of the public and safety under Section 841.12(b) of this Chapter.
- (c) Acquisition of land which is an integral and necessary part of an economically feasible plan to construct or rehabilitate housing under Section 845.11(c) of this chapter.
- (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 State 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 Mineral 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.

SECTION 850.13 - 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 Part 852 of this chapter.
- (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 chapter 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 between 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 Part 845 of this chapter;
 - (5) Policies and procedures regarding reclamation on private land under Part 848 of this chapter;
 - (6) Policies and procedures regarding rights of entry under Part 843 of this chapter; 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 system to be used by the agency. Such system 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 Section 840.12 of this chapter.
- (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 aesthetic, 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 wildlife and fish habitat;

- (vi) Underlying or adjacent beds of commercially mineable coal and other minerals and materials and projected methods of extraction; and
- (vii) Anticipated benefits from reclamation.

SECTION 850.14 - 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 State 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.
- (2) Solicited and considered the views of other Federal agencies having an interest in the plan.

SECTION 850.16 - WITHDRAWAL OF PLAN APPROVAL.

(a) The Director shall withdraw approval of a State Reclamation Plan, in whole or in part, if he determines that –
[Page 17931]

- (1) The State Regulatory Program has been terminated; 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 and the proposed effective date. 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 prior to withdrawing approval.

(c) The Director shall notify the State of his decision in writing. Within 20 days from receipt of the Director's decision to withdraw approval of a State Reclamation Plan the State may appeal to the Office of Hearings and Appeals under procedures contained in 43 CFR Part 4.

PART 852 - STATE RECLAMATION GRANTS

Section	
852.1	Scope.
852.2	Objectives.
852.3	Authority.
852.4	[Reserved]
852.5	Definitions.
852.6-852.10	[Reserved]
852.11	Eligibility for grants.
852.12	Coverage and amount of grant.
852.13	Grant period.
852.14	Submission of estimated annual budgets.
852.15	Grant application procedures.
852.16	Grant agreement.
852.17	Grant amendments.
852.18	Grant reduction and termination.
852.19	Audit.
852.20	Administrative procedures
852.21	Allowable costs.
852.22	Financial management.
852.23	Reports.
852.24	Records.

AUTHORITY: Sections 201(c), Pub.L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub.L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

SECTION 852.1 - SCOPE.

This Part 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.

SECTION 852.2 - 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.

SECTION 852.3 - AUTHORITY.

(a) The Regional Director is authorized to approve or disapprove applications for grants under this Part if the total amount of the grant does not exceed the moneys appropriated by the Congress and specifically allocated to the State under Section 840.11(b)(2) of this chapter. 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 Section 840.11(b)(5) of this chapter.

SECTION 852.4 [RESERVED]

SECTION 852.5 - 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.

SECTIONS 852.6-852.10 [RESERVED]

SECTION 852.11 ELIGIBILITY FOR GRANTS.

A state is eligible for grants under this Part if it has a State Reclamation Plan approved under Part 850 of this chapter.

SECTION 852.12 - COVERAGE AND AMOUNT OF GRANT.

(a) An agency may use moneys granted under this Part to administer the approved State Reclamation Plan 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 may be approved for up to 100 percent of the total agreed upon costs for the reclamation of eligible land and water, construction of public facilities, and program administration.

(c) Grants may be approved for up to 90 percent of the total agreed upon costs for the acquisition of land, including any improvements on the land, and mineral or water rights associated with the land.

SECTION 852.13 - GRANT PERIOD.

Grants shall be approved for a period of one year. Grants for projects that extend for more than one year may be approved if the projects are to be carried out under a single contract which cannot be subdivided into shorter time periods without additional cost to the State.

SECTION 852.14 - 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.

SECTION 852.15 - 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.

(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 pre-application is not required if the total of the grant requested is within the amounts allocated to the State under Section 840.11(b)(2) of this chapter.

(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. Program administration cost may be considered as a single project program administration cost. [Page 17932]

(2) Parts I, 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 within 30 days after receipt of a complete application, or as soon thereafter as possible, whether or not it is approved. 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.

SECTION 852.16 – 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 required under these regulations 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 three 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.

SECTION 852.17 – 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 which 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 approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible. The procedures of Section 852.16 shall be followed.

SECTION 852.18 - GRANT REDUCTION AND TERMINATION.

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

(2) If an agency fails to expend moneys allocated and granted within three years from the date of allocation, the Director may reduce the grant in accordance with Section 840.11(b)(2) of this chapter.

(3) If an agency fails to implement, enforce or maintain an approved State Regulatory Program and, as a result, the administration and enforcement grant provided under Part 740 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 (78 Stat. 252), 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, 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 Part or Part 705 of this chapter, the Regional Director shall terminate the grant.

(b) *Grant reduction 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 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 or reduction of the grant in writing by mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the United States 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) The agency shall reduce the amount of outstanding commitments as much as possible and report to the Regional Director the uncommitted balance of funds awarded under the grant.

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

(7) 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 - [Page 17933]

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

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

(3) The Director shall act upon appeals within 30 days of their receipt.

SECTION 852.19 - AUDIT.

The agency shall arrange for independent audit at least once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accord 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.

SECTION 852.20 - 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.

SECTION 852.21- ALLOWABLE COSTS.

(a) Reclamation project costs which shall be allowed include up to 90 percent of costs of the acquisition of land or interest in land, actual construction costs, actual operation and maintenance costs for permanent facilities, planning and engineering costs, and construction inspection costs.

(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.

SECTION 852.22 - 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 were 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.

SECTION 852.23 - 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 Section 840.12 of this chapter.

SECTION 852.24 - RECORDS.

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 -

- (a) The amount and disposition by the agency of all assistance received for the program.
- (b) The total direct and indirect costs of the program for which the grant was awarded.
 - 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 855 - INDIAN RECLAMATION PROGRAM

Section

- 855.1 Scope.
- 855.2 Objectives.
- 855.3-855.10 [Reserved]
- 855.11 Interim Procedures.

AUTHORITY: Section 201(c), Pub.L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub.L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

SECTION 855.1 - 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 land. Because of the special jurisdictional status of Indian land, general responsibilities for administration of Indian Reclamation Programs are set forth on an interim basis.

SECTION 855.2 - 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 land.
- (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.

SECTIONS 855.3-855.10 [RESERVED]

SECTION 855.11 - INTERIM PROCEDURES.

- (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 Parts 845 through 848 of this chapter.
- (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 chapter.
- (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 Section 840.11(c)(3) of this chapter.
- (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.

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