

FEDERAL REGISTER: 44 FR 14902 (March 13, 1979)

**DEPARTMENT OF THE INTERIOR (DOI)
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE)**

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program

**TITLE 30 MINERAL RESOURCES [4310-05-M]
CHAPTER VII; INTRODUCTION**

ACTION: Permanent Program Final Preamble (Introduction) - Final Rule

SUMMARY: The Office of Surface Mining Reclamation and Enforcement of the U.S. Department of the Interior ("OSM" or "the Office") adopts final regulations in this Chapter to implement a nationwide permanent program for the regulation of coal exploration and surface coal mining and reclamation operations and the surface effects of underground coal mining by the States and the Federal Government, as required by Title V of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act").

EFFECTIVE DATE: April 12, 1979, except as stated below in Paragraph 8 under discussion of "Approval of Other Agencies.

SUPPLEMENTARY INFORMATION: ADDRESSES:

- (1) Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240;
- (2) Administrative Record Office, Room 120, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; telephone number 202 343 4728.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard M. Hall, Assistant Director, Inspection and Enforcement (Subchapters A and L); Mr. Carl Close, Assistant Director, State and Federal Programs (Subchapters C, D, and F); Dr. David R. Maneval, Assistant Director, Technical Services and Research (Subchapters G, J, K, and M), Office of Surface Mining, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. Telephone numbers: Hall, 202 343 4217, Close, 202 343 4225, and Maneval, 202 343 4264.

SUPPLEMENTARY INFORMATION:

This document contains the final rules promulgated by the Office which implement the permanent regulatory program under SMCRA. Also included are the rationale, supporting technical references, and discussion of the alternatives used or considered by the Office in the formulation of final rules.

The final rules are issued to fulfill the Act's Congressional directive that the Secretary promulgate regulations implementing a permanent regulatory program for surface coal mining and reclamation operations. The permanent regulatory program is the second stage of the phased implementation of the Act as intended by Congress. Major categories included in the final rules are regulations specifying performance standards and design criteria, procedures and requirements for the submission of State programs, procedures governing the implementation of a Federal program for States without an approved State program, and procedures and the requirements for the regulation of surface coal mining and reclamation operations on Federal lands. In addition, these final rules contain provisions regarding applications for and issuance of coal exploration approvals and surface and underground coal mining and reclamation operations permits, blasting procedures, standards for performance bonds, and provisions for inspection, enforcement, and assessment of civil penalties.

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BACKGROUND

Throughout the implementation of the initial program (42 FR 62639 62716, December 13, 1977) and the promulgation of final rules to implement a permanent regulatory program, the Office has been guided by the intent of Congress that the States assume the lead in achieving the purposes of the Act. Section 503(a) of the Act requires States to submit permanent program applications by February 3, 1979. However, under Section 504(a), the Secretary may extend the date for State permanent program applications up to an additional 6 months, if submission of the application requires an act of the State legislature. This extension has been granted to all States where coal is currently mined. Thus, States have until August 3, 1979, to submit programs to the Secretary for approval. In addition, under Section 503 of the Act, a total of 10 months (6 months for initial review and 4 months for resubmission and reconsideration) may elapse before final Secretarial approval or denial of a State program. Thus, by June 3, 1980, a State program must be approved, or a Federal program implemented, in each State.

Under the permanent regulatory program all requirements of the Act are implemented and apply to all surface coal mining and reclamation operations in the Nation except those exempted by the Act. The full complement of permit and bond requirements and performance standards will apply to surface coal mining and reclamation operations upon issuance of a permit under a State or Federal program. The Act provides that 2 months after approval of a State program or implementation of a Federal program, each operator who wishes to continue to mine must apply for a new permit. Six months thereafter the regulatory authority is required to act on the application. However, an operator who has timely applied for a permit under the permanent program can operate under his or her initial program permit beyond the deadline until the State acts on his or her application, if the requirements of 30 CFR 771.13 are met. This means that for non-Federal and non-Indian lands, the coal mining and reclamation operations must have new permits and bonds and be in compliance with the full range of performance standards no later than February 3, 1981. If State programs are approved before June 3, 1980, or a Federal program is implemented before that date, the application of the full requirements of the Act to surface coal mining and reclamation operations will occur earlier than February 3, 1981.

On Federal lands, performance standards will apply to existing operations 6 months after the effective date of the regulations, or approximately mid-September 1979. If mine plan revisions are required, compliance with those performance standards which make the mine plan revisions necessary and such revisions must occur within 1 year following the effective date of the regulations. Permanent program permits for existing mines on Federal lands are required 8 months after approval of a State program or implementation of a Federal program for the State in which the Federal lands are located. Following the effective date of regulations, new mines on Federal lands must obtain a permit under the permanent regulatory program.

Surface coal mining operations on Indian lands are not regulated under the permanent regulatory program. Regulations which currently apply to surface coal mining operations on Indian lands were published on December 16, 1977 (42 FR 63394 63410), and are found at 25 CFR Part 177. {14908}

PUBLIC PARTICIPATION

Throughout the development of these final rules, the Office has solicited and given substantial consideration to the comments and recommendations received from the public. Following the release of the preproposed draft of final rules on July 3, 1978, and July 21, 1978, the Office held informal public hearings and was available for meetings with the public. The Office's administrative record was opened to receive written comments through August 18, 1978. Changes occurring between the texts of the preproposed and proposed permanent rules published on September 18, 1978, resulting from comments received during that period, were discussed in the preamble to the proposed rules (see 43 FR 41662 41663, September 18, 1978). 700

The final public comment period on the proposed rules began on the date of promulgation, September 18, 1978, and was originally scheduled to close at 5 p.m., November 17, 1978 (43 FR 41662, September 18, 1978). However, because the Office later determined that several pieces of technical literature referred to in the proposed rules were unavailable for inspection as of the 30th day prior to the close of the comment period, the closing date was then extended to 5 p.m., November 27, 1978. The Office also held one additional public hearing in Washington, D.C., on November 22, 1978, on the proposed rules (43 FR 50407, October 27, 1978).

PUBLIC HEARINGS

During the comment period on the proposed rules, 25 days of public hearings were held to receive oral and written comments on the regulations and regulatory analysis (see discussion of regulatory analysis, *infra*). Transcripts of testimony were placed in the administrative record and processed in the same manner as all other written comments. Public hearings

were held in Washington, D.C.; Charleston, West Virginia; Knoxville, Tennessee; Kansas City, Missouri; Indianapolis, Indiana; and Denver, Colorado.

PUBLIC MEETINGS

In response to specific requests, the Office and the Assistant Secretary for Energy and Minerals held a total of 57 public meetings on the substance of the proposed rules with State agencies or organizations, industry representatives, environmental groups, and other Federal agencies between September 18 and November 27, 1978. To the maximum extent possible, advance public notice was posted in the Administrative Record Office (Room 120), Office of Surface Mining, indicating the date, time, place, topic, and parties involved. A summary of each meeting was filed by a departmental or Office participant, incorporated in the administrative record, and processed as a written comment. A list of such meetings and the summary of each are available in the Administrative Record Office.

ANALYSIS OF PUBLIC COMMENTS

The Office received 589 written comments on the proposed regulations from individuals, organizations, and government agencies. Beginning in early November 1978, the Office organized 22 task groups comprised of more than 100 technical experts from the Office and more than 20 other agencies. The groups were assigned specific topics, parts, and sections of the proposed rules and were responsible for analyzing comments and developing recommendations in their area of expertise. Control mechanisms were used to track the referral of comments to the various groups and to insure that all comments were considered. In addition to the comments received on the proposed rules, comments on the preproposed drafts which were received after the August 18, 1978, deadline and were not previously considered, were included in this process. Also included were two comments (from the Arizona Public Service Commission and the Council on Environmental Quality) received within 2 hours after the close of the official comment period at 5 p.m., November 27, 1978. The Office determined that the commenters made a good faith effort to hand-deliver their comments by 5 p.m.

During the official comment period, the Office received comments on the proposed rules from the Council of Economic Advisors (CEA) as incorporated in the Council of Wage and Price Stability report submitted on behalf of the Regulatory Analysis Review Group (RARG). The Secretary, pursuant to Executive Order 12044 and after consultation with the Executive Office of the President and the U.S. Department of Justice, Office of Legal Council, decided to consult with CEA prior to promulgation of final regulations. On January 4, 1979, the Office made a catalog of all oral and written contacts between CEA and parties outside the Executive Office of the President available for public review (44 FR 1355, January 4, 1979). Copies of the catalog were made available in the Administrative Record Office at the Central Office and all five Regional Offices. The administrative record was reopened to accept public comments addressing the substance of the information contained in the catalog and the relationship of the catalog to the proposed regulations and RARG's comments received on November 27, 1978. This announcement also stated that all written comments must be received by 5 p.m., January 22, 1979, in order to be considered or included in the administrative record.

Comments received were given the following consideration. Each comment was forwarded to the appropriate Assistant Director(s) having expertise on, or primary administrative responsibility for, the relevant subject. Control mechanisms were used to insure that all timely comments were considered. Comments received after the deadline were not considered or included in the administrative record.

The preamble to the final rules contains the bases and purposes, alternatives considered, and decisions made by the Office in responding to significant comments. The Office considered significant comments to be those urging the adoption of viable alternatives or questioning the provisions in the proposed regulations, which provided reasonable rationale, justification, technical references, or other materials supporting the recommendations or comments. Insignificant comments, that is, those of a more general nature or those which proposed changes found to be inconsistent with the requirements of the Act, are included in the administrative record but are not discussed in the preamble.

APPROVAL OF OTHER AGENCIES

The Act and other Federal statutes, regulations, and Executive Orders require the Secretary, prior to promulgation of the final rules, to obtain written concurrence or comments from certain Federal agencies. These agencies include the U.S. Environmental Protection Agency; the U.S. Department of Agriculture; the U.S. Army Corps of Engineers; the U.S. Department of Labor; the Director, Federal Register; the U.S. Fish and Wildlife Service; and the Advisory Council on Historic Preservation. All concurrences necessary have been obtained and are on file in the administrative record. In addition,

under Section 201(e) of the Act and 44 U.S.C. 3502 and 3512, the Office must obtain the approval of the U.S. Government Accounting Office (GAO) for public recordkeeping and reporting requirements established by the regulations.

The requirements for concurrence or comment on the final rules by the foregoing agencies are as follows:

1. Sections 501(a)(B) and (b) of the Act require the written concurrence of the Administrator of the Environmental Protection Agency for regulations relating to air or water quality standards promulgated under the Clean Water Act and the Clean Air Act. By letter dated February 14, 1979, the Administrator of the Environmental Protection Agency concurred with the Office's regulations. {14909}
2. Section 510(d)(1) of the Act states that, under regulations issued by the Secretary with the concurrence of the Secretary of Agriculture, the regulatory authority shall follow certain procedures in granting permits for surface coal mining operations on prime farmland. The regulations concerning issuance of permits on prime farmland have been developed in consultation with the Secretary of Agriculture in accordance with Section 510(d)(1). By letter dated March 1, 1979, the Secretary of Agriculture concurred with the prime farmland provisions of the regulations.
3. Section 515(f) of the Act requires that regulations pertaining to coal mine waste piles and dams be promulgated with the written concurrence of the Chief of Engineers, U.S. Army Corps of Engineers. By letter dated February 15, 1979, the Chief of Engineers concurred with the regulations.
4. Section 516(a) of the Act states that the Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations and requires that such rules and regulations shall not conflict with or supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 or any regulation issued pursuant thereto. The written concurrence of the head of the department which administers the Act is required before final rules may be promulgated. By letter dated February 21, 1979, the Secretary of Labor concurred with these regulations.
5. Under 5 USC 522(a) the Office is required to consult with and receive the approval of the Director of the Federal Register for the incorporation by reference of materials into the text of the final rules. The Office filed a written request for approval of the Director of the Federal Register for incorporating by reference materials in the following Sections: 700.5, 785.17(b)(1), 785.19(e)(3)(i), 816.49(a)(5), 816.65(f)(2), 816.65(g), 816.97(c), 817.49(a)(5), 817.97(c). By letter dated February 7, 1979, the Director of the Federal Register has approved the Office's request.
6. The Office initiated consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., by memorandum of September 21, 1978. By letter of January 26, 1979, the Director, U.S. Fish and Wildlife Service, filed a Biological Opinion with the Office stating that the final regulations will not jeopardize the continued existence of endangered species and threatened species or result in the destruction or modification of habitat of such species.
7. The Office initiated consultation with the Advisory Council on Historic Preservation, under Section 106 of the National Historic Preservation Act and Executive Order 11593, by memorandum of September 21, 1978. A public meeting between representatives of the Advisory Council and the Office was held on November 2, 1978. The Office received written comments from the Advisory Council on November 27, 1978.
8. Under Section 201(e) of the Act (30 U.S.C. 1211(e)), OSM is considered an independent Federal regulatory agency for the purposes of 44 U.S.C. 3502 and 3512. As a result, all of the permanent regulations which impose recordkeeping and reporting requirements on members of the public have been submitted to the General Accounting Office (GAO) for clearance pursuant to its regulations (4 CFR Part 10).

Some Sections of the permanent regulations require the collection, submission, or retention of certain categories of information by the States, operators, or the general public. Other Sections sponsor, through the States, such collection, submission, or retention of information. The purpose of GAO review is to assure that the required information is obtained with a minimum of burden on the public and that unnecessary duplication of effort in providing the information is eliminated.

OSM has identified the following Sections of the final regulations that impose recordkeeping and reporting requirements. The Sections listed below are adopted subject only to clearance by GAO, pursuant to 44 U.S.C. 3512. These particular Sections of the regulations will not be effective until OSM publishes a notice of clearance by GAO.

SUBCHAPTER A

Sections 700.12(b), 700.13, 707.12.

SUBCHAPTER C

Sections 730.12(b), 731.12(a), 731.13, 731.14, 732.11(d), 732.13(f), 732.14, 732.16(a) and (b), 732.17(b), (f), and (g), 733.12(a)(2).

SUBCHAPTER D

Sections 741.11(a)(1), 741.11(c)(1), 741.12(c), 741.13(c), 741.15(a)(1), 741.15(b)(1), 741.21(b), 741.23(c), 741.24(b), 742.11(a), 742.13(a), 742.18(c), 742.18(d), 743.11(b), 745.11(a) and (b), 745.15(a), 745.16.

SUBCHAPTER F

Sections 761.12(b)(2), (d), (e) and (f), 764.11, 764.13(b) and (c), 764.15(a)(1), (2), (4), (5) and (6), 764.15(b)(1) and (2), 764.15(c) and (d), 764.17(a), (b), (c) and (e), 764.19(b), 764.21, 764.25(b), 769.11, 769.13.

SUBCHAPTER G

Sections 771.15(c), 771.21(a)(1), 771.21(b)(2) and (3), 771.23, 776.11 and 12, 776.14, 778.13 21, 779.11 27, 780.11 37, 782.13 21, 783.11 27, 784.11 25, 785.13(e), (f), (g), and (h), 785.14 22, 786.11(a), (b), (c), and (d), 786.12 23(d), 788.11 19.

SUBCHAPTER J

Sections 800.11, 800.12, 805.14(a) and (b), 806.11(b), 806.14, 807.11(a), 807.11(c), 807.11(e), 807.11(f), 807.11(g), 808.12.

SUBCHAPTER K

Sections 816.46(c)(4), 816.46(r), 816.46(t), 816.49(h), 816.52(a)(3), 816.52(b)(1)(iii), 816.53(a), 816.64, 816.65(a)(2)(iii), 816.67, 816.68, 816.71(j), 816.82(a)(4) and (b), 816.87, 816.91(b), 816.117(b)(4), 816.117(c)(1) and (c)(3), 816.131(b), 816.133(c)(1) (4) and (c)(8) (9), 816.150(d)(1), 816.152(d)(13), 816.160(d)(1), 816.163(d), 817.46(c)(4), 817.46(r), 817.46(t), 817.49(h), 817.52(a)(3), 817.52(b)(1)(iii), 817.53(a), 817.62, 817.65(b)(2)(iii), 817.67, 817.68, 817.71(j), 817.82(a)(4) and (5), 817.87, 817.91(b), 817.117(b)(4), 817.117(c)(1)(c)(3), 817.131(b), 817.133(c)(1) (4) (c)(8) and (9), 817.150(d)(1), 817.152(d)(13), 817.160(d)(1), 817.163(d), 822.14(a) and (d), 826.12(b).

SUBCHAPTER L

Sections 840.11(a), (c), and (d)(3), 840.14(a) and (b), 842.12(a), 842.14, 842.15(a) and (b), 843.11(a)(2), (b)(2)(c) and (f), 843.12(a)(2), (b) and (e), 843.13(c), (d) and (e), 843.14(a) (d), 843.15(d) and (f), 843.16, 845.17(a) and (b), 845.18(c) and (d), 845.19(a).

ENVIRONMENTAL IMPACT STATEMENT

A draft Environmental Impact Statement (EIS) was prepared pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and Section 702(d) of the Act. The draft EIS was filed with the Environmental Protection Agency (EPA) and made available to the public on October 4, 1978. Comments were received until November 27, 1978. Public hearings were held on the draft EIS in Washington, D.C., on October 31, 1978; in Indianapolis, Indiana, on November 1, 1978; and in Denver, Colorado, on November 2, 1978. The final EIS was filed with EPA and made available to the public on January 29, 1979. Comments received on the EIS which related to the substance of a rule were processed by the task groups, as were comments on the regulations, in order to integrate environmental issues raised by EIS comments with environmental factors considered in the development of the regulations. All comments on the draft EIS were responded to in the final EIS. {14910}

The final EIS analyzes the preferred alternative regulations at Appendix C and programmatic alternatives to the preferred alternative in Part A, VI and Part B, IV. The environmental analyses of the preferred alternative and alternatives to it contained in the final EIS are integrated into this preamble and were before OSM, other Departmental officials, and the Secretary, and were considered by them, prior to adoption of the final regulations. The programmatic alternatives in the final EIS were considered in addition to the individual alternatives to specific regulatory provisions discussed in this preamble.

In addition, public comments submitted on the final EIS were reviewed and summarized for the Secretary prior to his decision to promulgate these final rules. Copies of these comments are available in the administrative record room. OSM determined that none of these comments required revision of or a supplement to the final EIS.

REGULATORY ANALYSIS

A draft Regulatory Analysis (RA), prepared on the proposed permanent regulatory program in accordance with the requirements of Executive Order 12044, was made available to the public on September 21, 1978. Public comments were accepted through November 27, 1978. The final RA is being made available on the date of promulgation of these rules. Although Executive Order 12044 and OMB Circular A 116, issued on August 18, 1978, allow for an urban and community impact analysis for all new regulatory programs for which an RA is prepared, the Office found it impracticable to conduct such an analysis, because the promulgation of the permanent program would have been delayed well beyond the statutory deadline. OMB concurred in the decision not to complete such an analysis in a letter dated December 18, 1978. Documentation of the decision and OMB concurrence is available in the administrative record.

The final RA contains an economic analysis of selected alternatives to individual regulatory requirements, which alternatives were selected as described in Chapter II of the RA. The analysis of these alternatives is integrated into this preamble and was before OSM, other Departmental officials, and the Secretary, and was considered by them prior to adoption of the final regulations. The specific economic analyses of alternatives to individual regulations in the RA were considered in addition to the individual alternatives to specific regulatory provisions discussed in this preamble.

INTRODUCTION AND TABLE OF CONTENTS

In consideration of the foregoing, 30 CFR Chapter VII is amended as follows:

1. Certain existing parts of 30 CFR Ch. VII are recodified into subchapters as follows:
 - a. Parts 700, 705, and 706 are recodified as a new Subchapter A General.
 - b. Parts 710, 715 through 718, 720 through 723, and 725 are recodified as a new Subchapter B Initial Program Regulations.
 - c. Part 890 is recodified as a new Subchapter S Mining and Mineral Research Institutes.
2. The following existing parts of 30 CFR Ch. VII are redesignated and recodified into subchapters as follows:
 - a. Part 830 is redesignated as Part 865 and recodified in a new Subchapter P Protection of Employees.
 - b. Part 740 is redesignated as Part 735 and recodified in a new Chapter C Permanent Regulatory Programs in States.
3. Part 700 is revised to read as set forth below.
4. The following new parts are added to 30 CFR Ch. VII as set forth below:
 - a. Parts 701 and 707 are added to Subchapter A.
 - b. Parts 730 733 and 736 are added to Subchapter C.
 - c. A new Subchapter D consisting of Parts 740 745.
 - d. A new Subchapter F consisting of Parts 760 762, 764, 765, and 769.
 - e. A new Subchapter G consisting of Parts 770, 771, 776, 778 780, 782 788, 795.
 - f. A new Subchapter J consisting of Parts 800, 805, 806 809.
 - g. A new Subchapter K consisting of Parts 810, 815 820, 822 828.
 - h. A new Subchapter L consisting of Parts 840, 842, 843, and 845.
5. Subchapter R Abandoned Mine Lands Reclamation which was added October 25, 1978 (43 FR 49932) remains in place.
6. As amended, the table of contents for 30 CFR Chapter VII reads as follows: ***

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- 30 CFR Part 823 SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS - OPERATIONS ON PRIME FARMLAND
- 30 CFR Part 824 SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS - MOUNTAINTOP REMOVAL
- 30 CFR Part 825 SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS - SPECIAL BITUMINOUS COAL MINES IN WYOMING
- 30 CFR Part 826 SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS - OPERATIONS ON STEEP SLOPES
- 30 CFR Part 827 SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS – COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED AT OR NEAR THE MINESITE OR NOT WITHIN THE PERMIT AREA FOR A MINE
- 30 CFR Part 828 SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS – IN SITU PROCESSING

SUBCHAPTER L - PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

- 30 CFR Part 840 STATE REGULATORY AUTHORITY: INSPECTION AND ENFORCEMENT
- 30 CFR Part 842 FEDERAL INSPECTIONS AND MONITORING
- 30 CFR Part 843 FEDERAL ENFORCEMENT
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SUBCHAPTER M -- TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREW: CERTIFICATION PROGRAMS FOR BLASTERS

[These Parts will be repropose.]

SUBCHAPTER P - PROTECTION OF EMPLOYEES

- 30 CFR Part 865 PROTECTION OF EMPLOYEES

SUBCHAPTER R - ABANDONED MINE LAND RECLAMATION [Text of these Parts omitted]

30 CFR Part 870	ABANDONED MINE RECLAMATION FUND – FEE COLLECTION AND COAL PRODUCTION REPORTING
30 CFR Part 872	ABANDONED MINE RECLAMATION FUNDS
30 CFR Part 874	GENERAL RECLAMATION REQUIREMENTS
30 CFR Part 877	RIGHTS OF ENTRY
30 CFR Part 879	ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER
30 CFR Part 882	RECLAMATION ON PRIVATE LAND
30 CFR Part 884	STATE RECLAMATION PLANS
30 CFR Part 886	STATE AND TRIBAL RECLAMATION GRANTS