

**FEDERAL REGISTER: 48 FR 37377 (August 18, 1983)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 641, 642, 880 and 881

Abandoned Mine Land Reclamation;

Mine Fire Control and Subsidence and Strip Mine Rehabilitation in Appalachia

ACTION: Final rule.

**SUMMARY:** The Secretary of the Interior has reorganized the Department and has moved the functions and responsibilities of the Branch of Applied Technology and Demonstration of the Division of Minerals Environmental Technology of the Bureau of Mines (BOM) to the Office of Surface Mining. The rules previously administered by the BOM Branch of Applied Technology and Demonstration, which dealt with mine fire control and subsidence and strip mine rehabilitation in Appalachia, are amended in this rulemaking to reflect this reorganization.

EFFECTIVE DATE: September 19, 1983.

FOR INFORMATION CONTACT: Bob Tittle, Office of Surface Mining, Division of Federal Reclamation Programs, 1951 Constitution Ave., NW., Washington, D.C. 20240, 202/343-3363.

**SUPPLEMENTARY INFORMATION:**

- I. Background.
- II. Discussion of Final Rules Adopted.
- III. Procedural Matters.

**I. BACKGROUND**

By Secretarial order effective February 1, 1982, certain mined land demonstration and reclamation project functions were transferred from the Bureau of Mines to the Office of Surface Mining. This order was issued in accordance with the authority provided in Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and Title IV of the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 456). Transferred by this order was the authority for the administration of those research demonstration and reclamation projects previously conducted by the Bureau of Mines under Title IV of SMCRA and authority for administration of various projects conducted under the Bureau of Mines Organic Act; the Underground and Outcrop Fire Control Act, Pub. L. 83-738; the Anthracite Mine Water Control Act, Pub. L. 84-162; the Anthracite Mine Sealing and Filling Act, Pub. L. 87-818; the Appalachian Regional Development Act, Pub. L. 89-4; and various mining and reclamation projects for which the Bureau of Mines has received annual appropriations.

The rules previously administered by the BOM Branch of Applied Technology and Demonstration dealing with mine fire control and subsidence and strip mine rehabilitation in Appalachia are amended and transferred to 30 CFR Subchapter R to reflect this reorganization.

**II. DISCUSSION OF FINAL RULES ADOPTED**

The following editorial changes are made to these final rules to make them consistent with other OSM rules and applicable under OSM jurisdiction. These revisions are not meant to change the meaning of the rules, but rather to make OSM the authority in implementing them.

First, the Bureau of Mines rules 30 CFR Parts 641 and 642 are redesignated as 30 CFR Parts 880 and 881, respectively. Thus, the text of Sections 641.1-641.8 and Sections 642.1-642.12 is transferred to OSM's rules in Chapter VII Sections 880.1-880.8 and Sections 881.1-881.12, respectively. The indexes at the beginning of each new part and the section headings have been changed accordingly.

New Sections 880.1, 880.3, 880.8, 881.1, 881.8, 881.9, 881.11 and 881.12 will read the same as the previous BOM rules with no text or terminology changes. In the other sections two terms have been changed throughout the text. The

term "contribution contract" has been changed in both new parts to read "cooperative agreement" and the term "the Bureau" or "United States Bureau of Mines" has been changed to read "OSM." This term is defined in 30 CFR 870.5.

The definitions of "Secretary" and "Director" in previous Sections 641.2 and 642.2 are not included in new Sections 880.1 and 881.2 because they duplicate the definitions in 30 CFR 700.5, which cover all of Chapter VII. Also the definition of "Bureau" is removed. The lettering of paragraphs in new Sections 880.2 and 881.2 has been appropriately redesignated in consideration of these exclusions.

The term "contract" in previous Sections 641.4(a) and 642.5(a) is replaced in new Sections 880.4(a) and 881.5(a) with the term "agreement" to further reflect the change of terms "contribution contract" to "cooperative agreement."

A typographical error in previous Section 641.4(b) is corrected by lowercasing the word "[a]dministration."

The term "project contract" in the phrase "\* \* \* the estimated cost of the work under the proposed or existing project contract \* \* \*." in previous Section 641.5(d) is corrected to read "cooperative agreement" in new Section 880.5(d). This was done to correct an error in the original rule. The estimated cost of work is set in the cooperative agreement, not the project contract.

A similar error in previous Section 642.6(b) is corrected in new Section 881.6(b) by replacing the phrase "covered by the project contract" with "establish in the cooperative agreement."

The beginning of new Section 880.8 differs from previous Section 641.8 in that the first word "A" has been deleted to clarify that all State and local authorities must comply with the Civil Rights Act of 1964.

Because the term "Government" is defined in new Section 881.2 as meaning the United States of America, the phrase "United States of America" in previous Section 642.(f)(1) is replaced in new Section 881.6 with the term "Government."

The reference "this (c)" in previous Section 642.6(f)(4)(i)(c) is changed in format in the final rule to properly read "Paragraph (f)(4)(i)(C)."

Further revisions in these rules may be needed, and OSM will be studying the rules for their applicability to OSM program objectives and their consistency with the appropriate statutes, some of which have been amended since the BOM rules were promulgated.

The Department has determined that it is unnecessary, under the Administrative Procedure Act, 5 *U.S.C.* 553(b)(B), to require public comments on these changes through publication of a notice of proposed rulemaking. The substantive provisions of the rules are unaffected by these revisions of organization titles and terms and redesignation of CFR Parts. Therefore, because this is a procedural change only, proposed rulemaking is unnecessary.

### **III. PROCEDURAL MATTERS**

#### **Executive Order 12291**

OSM has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is procedural and has no economic effect on the public.

#### **Regulatory Flexibility Act**

The Department has also determined that this document will not have a significant economic effect on a substantial number of small entities and does not require a flexibility analysis under the Regulatory Flexibility Act.

#### **National Environmental Policy Act**

This rulemaking action qualifies as a Categorical Exemption under Appendix 1, Chapter 2, Part 516 of the Departmental Manual; thus no environmental assessment has been conducted under the National Environmental Policy Act.

#### **Paperwork Reduction Act**

It has been determined that the information collection requirements in new 30 CFR Part 880 and 881 have fewer than

10 respondents per year, and therefore are exempt from the requirements of the Paperwork Reduction Act (*44 U.S.C. 3501 et seq.*) and do not require clearance by OMB.

## **LISTS OF SUBJECTS**

### 30 CFR Part 880

Appalachia, Fire prevention, Government contracts, Grant programs, Mine safety and health, and Natural resources.

### 30 CFR Part 881

Appalachia, Grant programs, Mines, Natural resources, Reporting requirements, and Surface mining.

Accordingly, 30 CFR Parts 641, 642, 880 and 881 are amended as set forth herein.

Dated: August 12, 1983.

W. L. Dare, Acting Deputy Assistant Secretary for Energy and Minerals.

1. Parts 641 and 642 of Chapter VI are redesignated as Parts 880 and 881, respectively, of Chapter VII and revised to read as follows:

## **PART 880 -- MINE FIRE CONTROL, APPALACHIA**

### Section

880.1	Scope.
880.2	Definitions.
880.3	Qualification of projects.
880.4	Cooperative agreements.
880.5	Project contracts.
880.6	Administration of contributions.
880.7	Assistance by States and local authorities.
880.8	Civil rights.

Authority: Section 7, 68 Stat. 1011, Section 205, 79 Stat. 13; *30 U.S.C. 557*, *40 U.S.C. App. 205* and Pub. L. 95-87, *30 U.S.C. 1201 et seq.*

### **SECTION 880.1 - SCOPE.**

Projects for the control or extinguishment of outcrop or underground fires in coal formations under the authority of the Act of August 31, 1954 (*30 U.S.C. 551-558*) and pursuant to subsection (a)(2) of Section 205 of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5), shall be instituted and conducted in accordance with the regulations in this part.

### **SECTION 880.2 - DEFINITIONS.**

As used in the regulations in this part and in cooperative agreements, entered into pursuant to the regulations in this part:

- (a) "GOVERNMENT" means the United States of America;
- (b) "COMMISSION" means the Appalachian Regional Development Commission established by Section 101 of the Appalachian Regional Development Act of 1965;
- (c) "STATE" means any one of the States listed in Section 403 of the Appalachian Regional Development Act of 1965; and

(d) "LOCAL AUTHORITIES" means a county, city, township, town, or borough, and other local governmental bodies organized and existing under authority of State laws.

### **SECTION 880.3 - QUALIFICATIONS OF PROJECTS.**

A project in a State for the control of fires in coal formations will be undertaken in cooperation with a State and local authorities if, in the Secretary's judgment, the project will prevent injury and loss of life, protect public health, conserve natural resources, or protect public and private property. Projects must be submitted by a State to the Commission and receive the approval of that body.

### **SECTION 880.4 - COOPERATIVE AGREEMENTS.**

(a) Each project shall be covered by a cooperative agreement among the Government, as represented by the Director, the State and the local authorities. The agreement shall establish the total estimated cost of the project and, if the project is to be accomplished in phases, the estimated cost of each phase. The maximum obligations of the parties to share the cost of the project shall be stated in terms of the total estimated cost of the project. Other responsibilities of the parties shall also be described in the agreement, as may be agreed and in conformity with the regulations in this part, to meet the needs and requirements of a particular project.

(b) Total project costs shall include the costs of the work performed pursuant to a project contract or a series of project contracts, and the costs to OSM of administration, engineering, planning, direction of the project work, and routine maintenance and inspection following completion of the work performed to control or extinguish the fire.

(c) The Government's obligation to contribute funds may be less than but shall not exceed 75 percent of the total estimated cost of the project. The obligation of the State (and, if appropriate, the local authorities) to contribute funds may be more but shall not be less than 25 percent of the total estimated cost of the project.

(d) None of the funds contributed by the Government or the State or the local authorities shall be used for the purchase of sand, clay, stone, or other such kinds of noncombustible materials used to control or extinguish the fire.

### **SECTION 880.5 - PROJECT CONTRACTS.**

(a) OSM will design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts.

(b) A State or local authority must pay the financial contribution required under the cooperative agreement to OSM after the bids on a proposed project contract have been opened but before the contract is awarded. The State will be advised of the time and place of the opening of bids on a proposed project contract and may have a representative present and, when requested, shall advise OSM with respect to the qualifications of bidders. OSM will recognize the contribution and cooperation of State and local authorities in advertisements for bids for the work.

(c) If the bids on work to be done under a proposed project contract exceed the estimated cost of that work, OSM shall not enter into a project contract until the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs. Similarly, no amendment shall be made to, and no change order shall be issued under, a project contract, if the amendment or change order would result in an expenditure under the contract in excess of the estimated cost of the work until the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs.

(d) The Director is authorized to execute an amendment to a cooperative agreement, without prior approval of the Secretary, to meet an increase in costs under a proposed or existing project contract if the increase is not in excess of 20 percent of the estimated cost of the work under the proposed or existing cooperative agreement.

## **SECTION 880.6 - ADMINISTRATION OF CONTRIBUTIONS.**

Financial contributions made by a State or local authorities will be deposited in trust in the Treasury of the United States for withdrawal and expenditure by OSM pursuant to the cooperative agreement and as necessary in performance of the project work. Withdrawals and expenditures from the trust fund will be made only for costs connected with the project. Any part of the money contributed by a State or local authority for an individual project which remains unexpended at the completion or termination of project will be returned to the State or local authority.

## **SECTION 880.7 - ASSISTANCE BY STATES AND LOCAL AUTHORITIES.**

Either the State or local authorities, as may be appropriate in each particular project, and without cost or charge to project costs shall:

- (a) Provide such assistance in planning and engineering the project as may be requested by OSM;
- (b) Furnish accurate information, data, and accurate maps on the location of the project and the location of water, sewer, and power lines within the project area, and maps or plats showing properties and lands on which releases, consents, or rights or interests in lands have been obtained;
- (c) Obtain and deliver to OSM releases, proper consent or the necessary rights or interests in lands, and other documents required by OSM for approval of the project, and in form and substance satisfactory to OSM;
- (d) Furnish a certification in form and substance satisfactory to OSM that the releases, consents, or the necessary rights or interests in lands, are from all the legal property owners within the project area;
- (e) Agree to indemnify and hold the Government harmless should any property owner within the project area make any claim for damage resulting from the work within the project area if releases, consents or rights or interests were not obtained from such property owner by the State or local authorities;
- (f) Grant to the Government the right to enter upon streets, roads, and other land owned or controlled by the State or the local authorities overlying or adjacent to the project fire area, and to conduct thereon the operations referred to in the cooperative agreement and project contract, and agree to hold the Government harmless from any claim for damage arising out of the project operations to property owned, possessed or controlled by the State or local authorities in the vicinity of the project area;
- (g) Furnish sand, clay, stone, or other such kinds of noncombustible materials, used in the flushing of voids, installation of fire barriers, plugs, trenches, fills, or other means or methods used to control or extinguish the fire;
- (h) Maintain and perform maintenance work on the project as may be provided in the cooperative agreement;
- (i) Agree not to mine or permit mining of coal or other minerals on property owned or controlled by the State or local authorities, if required by OSM, to assure the success of, or protection to, the project work and the control or extinguishment of the fire, and for such period of time as may be required by OSM; and
- (j) If necessary, procure the enactment of State or local laws providing for the control and extinguishment of outcrop and underground fires in coal formations on State or privately owned lands and the cooperation of the State or local authorities in the work and the requisite authority to permit the States or local authorities to meet the obligations imposed by the regulations in this part of a cooperative agreement.

## **SECTION 880.8 - CIVIL RIGHTS.**

State and local authorities shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all requirements imposed by or pursuant to the regulations of the Department of the Interior entitled "Nondiscrimination in

Federally-assisted Programs of the Department of the Interior-Effectuation of Title VI of the Civil Rights Act of 1964" (43 CFR Part 17) and shall give assurances of compliance in such form as may be required by the Director.

## **PART 881 -- SUBSIDENCE AND STRIP MINE REHABILITATION, APPALACHIA**

### Section

881.1	Purpose and scope.
881.2	Definitions.
881.3	Qualification of projects.
881.4	Application for contribution.
881.5	Cooperative agreements.
881.6	Project contract.
881.7	Administration of contributions.
881.8	Withholding of payments.
881.9	Reports.
881.10	Obligations of States or local authorities.
881.11	Nondiscrimination.
881.12	Civil rights.

Authority: Section 205, 79 Stat. 13 (*40 U.S.C. App. 205*), and Pub. L. 95-87, *30 U.S.C. 1201* et seq.

### **SECTION 881.1 - PURPOSE AND SCOPE.**

The regulations in this part provide for contributions by the Secretary with respect to projects in the Appalachian Region for the sealing and filling of voids in abandoned coal mines or for the reclamation and rehabilitation of existing strip and surface mine areas under the authority of subsection (a)(1) of Section 205 of the Appalachian Region Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5)

### **SECTION 881.2 - DEFINITIONS.**

As used in the regulations in this part and in cooperative agreements entered into pursuant to the regulations in this part:

- (a) "GOVERNMENT" means the United States of America;
- (b) "COMMISSION" means the Appalachian Regional Development Commission established by Section 101 of the Appalachian Regional Development Act of 1965;
- (c) "STATE" means any one of the States listed in Section 403 of the Appalachian Regional Development Act of 1965; and
- (d) "LOCAL AUTHORITIES" or "local bodies of government" means a county, city, township, town, or borough, and other local governmental bodies organized and existing under authority or State laws.

### **SECTION 881.3 - QUALIFICATION OF PROJECTS.**

- (a) Projects for the reclamation and rehabilitation of strip-mined areas will be considered only if all of the lands embraced within the project are lands owned by the Federal Government, a State, or local bodies of government.
- (b) Projects must be submitted by a State to the Commission and receive the approval of that body.

#### **SECTION 881.4 - APPLICATION OF CONTRIBUTION.**

(a) A State in its application for contribution to a project shall fully describe the conditions existing in the project area and give a full justification for the project in terms of the relationship of the potential benefits that will result from the project to the estimated costs of the project and in terms of the improvement, on a continuing basis, to the economic potential of the State or area which the project will bring about. If the project entails the reclamation and rehabilitation of strip and surface mined areas, the application shall state the uses to which the lands will be put.

(b) Before submitting a project to the Secretary for approval, the Director shall obtain from the State the following:

(1) Copies of inspection procedures, designs, plans and methods of engineering proposed for the construction, installation, services or work to be performed to accomplish the objectives of the project;

(2) Accurate information, data, and maps of the location of the project, the area involved, and, if the project consists of work designed to prevent or alleviate subsidence, information, data, and maps (if available) of the seams of coal to be filled or flushed;

(3) The proposed advertisement for bids for each project contract, which advertisement shall include suitable references concerning the fact that the project is one to the cost of which the Government will contribute under the Appalachian Regional Development Act of 1965, and that the State's acceptance of liability arising out of any bid shall be subject to contribution by the Government under the provisions of a cooperative agreement with the Government for that purpose;

(4) The proposed project contract, together with specifications and drawings pertaining to the equipment, materials, labor and work to be performed by the project contractor;

(5) Releases, proper consent or the necessary rights or interests in lands and coal formations, for gaining access to and carrying out work in or on the project, and other documents required by OSM for approval of the project, and in form and substance satisfactory to OSM;

(6) Certifications or documents, as may be required by OSM, indicating public ownership or control of subsurface coal or mineral rights accompanied by appropriate resolutions from the State or local authorities to indemnify and hold the Government harmless should any property owner within the project area make any claim for damage resulting from the work within the project area if releases, consents or rights or interests were not obtained from such property owner by the State or local authorities, and not to mine or permit mining of coals or other minerals in property owned or controlled by the State or local authorities.

(7) If the project is for the rehabilitation or reclamation of a strip mine area, evidence satisfactory to the Secretary that the State or local authority owns the lands upon which the project is proposed to be carried out, and that effective installation, operation, and maintenance safeguards will be enforced;

(8) The estimated total cost of the proposed project and, if the work is proposed to be performed in phases, the estimated cost of each phase.

(c) If the Secretary approves the project, the Director will submit to the State a cooperative agreement establishing the estimated cost of the project in the amount approved by the Secretary.

#### **SECTION 881.5 - COOPERATIVE AGREEMENTS.**

(a) Each project shall be covered by a cooperative agreement between the Government, as represented by the Director, and the State. The agreement shall establish the total estimated cost of the project and, if the project is to be accomplished in phases, the estimated cost of each phase. The maximum obligations of the parties to share the cost of the project shall be stated in terms of the total estimated cost of the project and, if project is to be accomplished in phases, in terms of the estimated cost of each phase. Other responsibilities of the parties shall also be described in the agreement, as may be agreed upon and as may be in conformity with these regulations, to meet the needs and requirements of a particular project.

(b) The Government's obligation to contribute funds may be less than but shall not exceed 75 percent of the total estimated cost of the project. The obligation of the State (and, if appropriate, the local authorities) to contribute funds may be more but shall not be less than 25 percent of the total estimated cost of the project.

(c) None of the funds contributed by the Government or by the State shall be used for operating or maintaining the project or for the purchase of culm, rock, spoil, or other filling or flushing material.

(d) The Director may, without approval by the Secretary execute amendments to a cooperative agreement which will cover (1) acceptance of a bid on a proposed project contract that does not exceed by more than 20 percent the estimated cost, initially established in the cooperative agreement, of the work covered by the proposed project contract, and (2) the estimated costs of additional work under a project contract, if the estimated cost, initially established in the cooperative agreement, of the work covered by the project contract will not be increased by more than 20 percent.

#### **SECTION 881.6 - PROJECT CONTRACT.**

(a) Upon approval of the project by the Secretary, execution of the cooperative agreement, and receipt of an acceptable bid, the State shall carry out and execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts, entered into by the State and its contractors or suppliers for the construction, installation, services or work to be performed.

(b) Project contracts shall be entered into only with the lowest responsible bidder pursuant to suitable procedures for advertising and competitive bidding. The Government's obligation to contribute to the cost of a project, or a phase of a project, is limited to the estimated costs established in the cooperative agreement. If the bids on work to be done under a proposed project contract exceed the estimated cost of the work established in the cooperative agreement, the State should not enter into the project contract unless the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs, or unless the State wishes to assume the excess cost of the project.

(c) OSM shall be advised of the time and place of the opening of bids on a proposed project contract and may have a representative present.

(d) If the State amends a project contract, or issues a change order thereunder, and the amendment or change order results in an expenditure under the project contract in excess of the estimated cost of the work established in the cooperative agreement, the Government shall be under no obligation to contribute to such excess costs unless the cooperative agreement has been amended to provide for an increase in contributions by the parties sufficient to meet such excess costs.

(e) The State shall furnish the Director, in duplicate, a certified true executed copy of each project contract with related plans, specifications, and drawings annexed thereto, promptly upon its execution.

(f) The State shall include in each project contract provisions to the effect that --

(1) Regardless of any agreement between the State and the Government respecting contributions by the Government to the cost of the contract under the provisions of Section 205(a)(1) of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5), the Government shall not be considered to be a party to the contract or in any manner liable thereunder. Neither the Government nor any of its officers, agents, or employees shall be responsible for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to the use and occupation of any property affected by the operations contemplated under the project, or for damages to the property of the contractor, or for injuries to the person of the contractor, or for damages to the property, or injuries to the contractor's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any of them, and the State and the project contractor shall hold the Government and any of its officers, agents, or employees, harmless from all such claims.

(2) The Secretary of the Interior or the Director of OSM or their authorized representative may enter upon and inspect the project at any reasonable time and may confer with the contractor and the State regarding the conduct of project operations.

(3) All laborers and mechanics employed by the contractor or subcontractors on the project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary of Labor shall have with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950



(15 FR 3176, 64 Stat. 1267, 5 U.S.C. 133-133z-15), and Section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

(4) To assure the use of local labor to the maximum extent practicable in the implementation of a project:

(i) Every contractor or subcontractor undertaking to do work on the project which is or reasonably may be done as onsite work, in carrying out such contract work shall give preference to qualified persons who regularly reside in the labor area as designated by the U.S. Department of Labor wherein such project is situated, or the subregion, or the Appalachian counties of the State wherein such project is situated, except:

(A) To the extent that qualified persons regularly residing in the area are not available;

(B) For the reasonable needs of any such contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the contract;

(C) For the obligation of any such contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of nonresident persons employed under Paragraph (f)(4)(i)(C) exceed 20 percent of the total number of employees employed by such contractor and his subcontractors on such project.

(ii) Every such contractor and subcontractor shall furnish the appropriate U.S. Employment Service offices with a list of all positions for which laborers, mechanics, and other employees may be required.

(iii) Every such contractor and subcontractor shall furnish periodic reports to the contracting agency on the extent to which local labor has been used in carrying out the contract work.

#### **SECTION 881.7 - ADMINISTRATION OF CONTRIBUTIONS.**

(a) The Government's contribution to a State will be made only pursuant to a cooperative agreement and only upon the basis of payments made, or that are then due and payable, by the State under a project contract between the State and its contractor for the construction, installation, services or work performed on individual projects and shall not exceed 75 percent of such amounts.

(b) The State shall submit to the Director, not more often than once a month and for each cooperative agreement, a separate voucher which describes each payment made or that is due and payable by the State under a project contract. The amounts claimed under each voucher shall be certified by the State as proper charges under the project contract, and the State shall also certify that the amounts have either been paid or are due and payable thereunder. Insofar as the Government's contribution payments related to amounts due and payable rather than amounts already paid, the State shall disburse such funds together with the funds contributed by the State, promptly upon receipt from the Government.

(c) The State shall maintain suitable records and accounts of its transactions with and payments to project contractors, and the Government may inspect and audit such accounts and records during normal business hours and as it may deem necessary.

#### **SECTION 881.8 - WITHHOLDING OF PAYMENTS.**

Whenever the Secretary, after reasonable notice and opportunity for hearing, finds that there is a failure by the State to expend funds in accordance with the terms and conditions governing the Government's contribution for an approved project, he shall notify the State that further payments will not be made to the State from available appropriations until he is satisfied that there will no longer be any such failure. Until the Secretary is so satisfied, payment of any financial contribution to the State shall be withheld.

#### **SECTION 881.9 - REPORTS.**

At such times and in such detail as the Secretary shall require, the State shall furnish to the Secretary a statement with respect to each project showing the work done, the status of the project, expenditures, and amounts obligated, and such other information as may be required.

## **SECTION 881.10 - OBLIGATIONS OF STATES OR LOCAL AUTHORITIES.**

(a) The State shall have full responsibility for installing, operating, and maintaining projects constructed pursuant to the regulations in this part.

(b) The State shall give evidence, satisfactory to the Secretary, that it will enforce effective safeguards with respect to installation, operation, and maintenance.

(c) The State shall agree that neither the Government nor any of its officers, agents, or employees shall be responsible for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to work upon, or to the use and occupation of any property affected by operations under, the project, and the State shall agree to hold the Government and its officers, agents, or employees harmless from all such claims.

(d) In order to assure effective safeguards with respect to installation, operation, and maintenance, the State or local authority will be required to own (or control), the land, subsurface, or coal seams in instances such as the following:

(1) If the objective of the project is to prevent or alleviate subsidence, the State or local authority shall have or acquire such subsurface and underground rights or interests in such coal seams or coal measures as may be required to assure the stability and continued existence of the project and to such an extent as will give reasonable assurance that the work will not be disturbed in the future.

(2) If the objective of the project is to rehabilitate or reclaim strip-mined areas, the land shall be owned by the Federal, State, or local body of government. Such ownership shall comprise such mineral, subsurface and underground rights and interests as will assure that no further mining operations will be conducted upon or under the land in the future.

(3) If the objective of the project is to seal abandoned open shafts, slopes, air holes and other mine openings to underground workings where public safety hazards exist, or to control or prevent erosion, water pollution, or discharge of harmful mine waters, the State shall have or acquire such right, title or interest in the lands as will assure the stability and continued existence of the project work.

(4) The extent of ownership or control necessary shall be determined with respect to each individual project.

(e) The State or local authorities, shall agree not to mine or permit the mining of coal or other minerals in the land or property owned or controlled by the State or local authorities, if required by OSM to assure the success or protection of the project work for such period of time as may be required by OSM.

(f) Upon request of OSM, the State or local authority shall furnish and disclose the nature and extent of its right, title, or interest in lands within, or which may be affected by, the project and submit an analysis, in writing, of the title situation, the effectiveness, extent and strength of the title which has been acquired, and an opinion as to the protection which the documents conveying the various rights, titles, and interests in the land afford the project work and as to any defects in the title.

(g) If necessary, State and local authorities shall procure the enactment of State or local laws or ordinances providing authority to participate in the work and projects conducted pursuant to the regulations in this part on lands owned by the State, the local authorities, or private persons, and the requisite authority to permit the State or local authorities to meet the obligations imposed by the regulations in this part or a cooperative agreement and to enter into project contracts of the kind and nature contemplated for the work to be performed.

## **SECTION 881.11 - NONDISCRIMINATION.**

The State shall comply with the provisions of Section 301 of Executive Order 11246 (Sept. 24, 1965; *30 FR 12319, 12935*) and shall incorporate the provisions prescribed by Section 202 of Executive Order 11246 in each project contract, and shall undertake and agree to assist and cooperate with the Director and the Secretary of Labor, obtain and furnish information, carry out sanctions and penalties, and refrain from dealing with debarred contractors, all as provided in said Section 301.

**SECTION 881.12 - CIVIL RIGHTS.**

State or local authorities shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all requirements imposed by or pursuant to the regulations of the Department of the Interior entitled "Nondiscrimination in Federally-assisted Programs of the Department of the Interior -- Effectuation of Title VI of the Civil Rights Act of 1964" (43 CFR Part 17) and shall give assurances of compliance in such forms as may be required by the Director.

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