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DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 870, 872, 874, 875, 877, 879, 882, 884, 886, 888

Revision of the Abandoned Mine Land Reclamation Program Rules

ACTION: Final rules.

SUMMARY: The Office of Surface Mining (OSM) has revised the abandoned mine land reclamation rules in response to the Administration's request for regulatory review. These revised rules concern the establishment and administration of the Abandoned Mine Land Reclamation (AMLR) Program by the States, Tribes, and Federal Government as required by the Surface Mining Control and Reclamation Act of 1977, (the Act). The revised rules clarify the relationships and responsibilities of the States, Indian tribes, and Federal Government in implementing a coordinated AMLR Program.

EFFECTIVE DATE: June 30, 1982.

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SUPPLEMENTARY INFORMATION:

The Abandoned Mine Land Reclamation Program was established by the Surface Mining Control and Reclamation Act of 1977 (the Act, Pub. L. 95-87, 30 U.S.C. 1201 et seq.) in response to concern over extensive environmental damage caused by past coal mining activities. The Abandoned Mine Reclamation Fund derives its financing from Title IV of the Act which establishes a fee on coal production for the purpose of financing specified Federal, State, and Indian reclamation programs. Programs funded by congressional appropriation include grants to States and Indian tribes to plan and carry out reclamation programs and projects, Federal reclamation projects carried out by the Secretary of the Interior through OSM and other Interior agencies, and the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture and carried out by the Soil Conservation Service. On October 25, 1978, OSM published final rules (43 FR 49932-49952) implementing an abandoned mine land reclamation program incorporating the provisions of Title IV of the SMCRA.

These rules established procedures and requirements for the preparation and implementation of State and Indian reclamation programs, consisting of reclamation plans, submission of annual projects, and applications for annual grants. Additional parts included provisions for Federal, State, and Indian Abandoned Mine Reclamation Funds, general reclamation objectives, rights-of-entry, liens, emergency reclamation procedures, acquisition and disposition of lands and waters, reclamation on private lands, and Indian reclamation programs.

Rules relating to the amount and collection of fees were promulgated in 30 CFR Part 837 on December 31, 1977 (42 FR 62713). This Part has since been redesignated as Part 870.

INFORMATION COLLECTION AND RECORDKEEPING REQUIREMENTS

The information collection requirements in the existing AMLR rules were approved by OMB under 44 U.S.C. 3507. Those approvals were identified in "notes" at the introductions to 30 CFR Parts 870, 872, 877, 879, 882, 884 and 886. OSM has deleted those "notes" and codified the OMB approvals under new Sections 870.10, 872.10, 877.10, 879.10, 882.10, and 886.10. These approvals are described below under the preamble discussions for each Part having information collection and recordkeeping requirements. Since the information collection requirements contained in Section 884.13 and Section 884.15 have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and do not require clearance by the Office of Management and Budget.

The required information is being collected to insure the adequate implementation of approved reclamation programs and to enforce the fee provisions of the Act. OSM, States, and Indian tribes will use the information, and it will benefit

the States and Indian tribes by enabling OSM to effectively allocate grant funds for administration and implementation of State/Indian reclamation plans and construction projects.

INTRODUCTION TO FINAL RULE REVISIONS

Pursuant to Executive Order 12291, every Federal agency is required, within applicable statutory constraints, to choose regulatory goals that maximize benefits to society and to select the most efficient and effective means to achieve these goals. In addition, one of the Secretary's goals is to eliminate rules which are excessive, burdensome or counterproductive. To accomplish this deregulation and regulatory reform and to assure that the Executive Order is carried out, OSM with the assistance of the Secretary's Regulatory Reform Task Force, has reviewed its existing rules concerning the implementation of the abandoned mine land reclamation program and is promulgating final revisions to 30 CFR Chapter VII, Subchapter R. OSM has sought to provide early and meaningful public participation during its regulatory review. To this end, OSM has met with and received comments and recommendations from the representatives of coal mining States. A public comment period was held (*46 FR 60778* and *47 FR 967*) and a public hearing was conducted on January 8, 1982.

Numerous comments from the public and representatives of the States, industry, and environmental organizations were received and considered in the rulemaking process. All substantive comments received are addressed in the following preamble.

All comments received as well as summaries of meetings held and the record of the public hearing are available for inspection in the Administrative Record, Room 5315, 1100 L St., NW., Washington, D.C.

ORGANIZATION

The regulatory revisions are intended to implement the requirements of the Act consistent with the purposes stated in Section 102(h), its legislative history, and the Secretary's commitment to avoid excessive and burdensome rules. The material is organized into parts which comprise Subchapter R.

PART 870 -- ABANDONED MINE RECLAMATION FUND -- FEE COLLECTION AND COAL PRODUCTION REPORTING

Title IV of the Surface Mining Control and Reclamation Act of 1977 (the Act) directed the Secretary of the Interior to collect per-ton reclamation fees from coal mine operators to support the reclamation and other activities listed under this title. OSM developed a reclamation fee collection program and published rules in the Federal Register to assist mine operators in meeting their fee obligations, to specify management activities for fee collection, and to define a range of compliance activities that include compliance investigations, audits, debt collection, and litigation procedures.

The major components of the fee collection program are the fee collection system, the fee compliance system, and the litigation system.

Fee collection system: The United States Bureau of Mines' (BOM) Finance Branch in Denver, Colo., is currently OSM's agent for the collection of fund revenues. BOM, through a reimbursable agreement with OSM, is responsible for providing accounting and data processing services to implement and maintain a reclamation fee collection system. These services include (1) collecting and depositing reclamation fees into the Federal depository, (2) providing an automated information system for fee payments, delinquencies, and program management, and (3) reconciling procedures to make annual allocations of collections for appropriation and use by States and Indian tribes under approved reclamation programs.

Fee compliance system: Fee compliance officers are located in the coal producing regions to insure that fees are collected through appropriate investigation, audits, and collection activities.

Litigation system: The Associate Solicitor, Division of Surface Mining, is responsible for litigation associated with the collection of delinquent fees. The Division takes enforcement action to collect delinquent fees and provides legal assistance on fee-related issues.

On December 13, 1977, OSM published final rules as Part 837 (*42 FR 62713*) setting forth procedures for payment of reclamation fees and recordkeeping requirements. On May 15, 1978, OSM published an amendment to these rules (*43 FR 20793*) to establish the interest rate on late payments. These rules were later renumbered in the Code of Federal Regulations as Part 870. Although the existing rules have been adequate for initial implementation of OSM's fee collection program, this revision clarifies those rules regarding the individual responsible for the fee payment; the point of initial sales, transfer of ownership, or use; the method by which the fee liability is calculated; and OSM's authority to examine sales records relevant to determination and verification of fee liability.

SECTION 870.1 (SCOPE).

The existing section has not been changed. One commenter recommended that the entire fee collection program be turned over to the States. OSM's response is that Section 405(d) of the Act, which addresses State reclamation programs, excludes fee collection activities. Fees are paid to the Secretary of the Interior; they are then deposited in a United States Treasury Trust Fund and subsequently appropriated from this fund by Congress to carry out reclamation projects. Accordingly, even if some administrative collection activities could be transferred to the States, the monies collected could not be retained by the States due to the statutory provisions. OSM has elected, therefore, to retain all collection work.

Two commenters also proposed that Part 870 include detailed procedures for collection and enforcement actions against delinquent operators and provide for regular program reports to each State on delinquencies, collections, litigation, etc. OSM does not believe that internal procedures and program reports belong in these rules. Part 870 establishes procedures to assist operators in voluntarily complying with the fee reporting and payment provisions of the Act and to assist agency employees in administering the fee collection program.

SECTION 870.2 (OBJECTIVES).

This section has been deleted. OSM considers this section unnecessary because the objectives are clearly defined in the Act.

SECTION 870.3 (RESPONSIBILITY).

This section has been deleted for the same reason as Section 870.2.

SECTION 870.5 (DEFINITIONS).

All definitions used in Parts 870 through 888 have been moved to this section for clarity and ease of reference. Amended or new definitions are set forth below, along with a discussion of the comments received. Throughout Subchapter R, the term "Office" has been changed to "OSM" to avoid possible confusion with other offices. There is no change in meaning, and "OSM" has been added to the list of definitions in Section 870.5.

Abandoned Mine Reclamation Fund. In the existing rules and Section 401 of the Act, this "fund" is described as a "trust fund." This caused certain States to inquire whether trust fund moneys are deposited in interest-bearing accounts. Consequently, the word, "trust" was replaced by the word, "special," in the proposed regulations to avoid confusion in the definition. Five commenters opposed the use of the term "special fund" based on the view that the intent of Section 401(a) of the Act was to establish an interest-bearing "trust fund." The Treasury does not pay interest on moneys in special accounts unless Congress specially provides for interest to be paid and makes appropriations for that purpose. Congress has not provided for interest payments in Title IV of the Act nor appropriated moneys for that purpose. The use of the term "special fund" is, therefore, retained as proposed.

One commenter urged that, when the Act comes up for amendment, the 50-percent share allocated to the States be placed in an interest-bearing account. This comment is outside the scope of this rulemaking activity.

Anthracite, bituminous, and subbituminous coal. In the existing rules, this definition is included to distinguish all other coals from lignite. Such a distinction is necessary because Section 402(a) of the Act establishes a separate tonnage fee for lignite coal.

Two commenters suggested that the definition of anthracite, bituminous, and subbituminous coal be revised to exclude excess moisture; that is, including the natural inherent or bed moisture of the coal, but not water adhering to the surface of the coal. Both commenters asserted that such a change would make this definition "consistent with the exclusion of excess moisture in the existing definition of lignite coal." This change excludes "excess moisture" from the calculation of weight for determining fee liability. The excess moisture issue and related comments are addressed in Section 870.12, below. However, it should be noted that all references to moisture in the definition of lignite coal relate to the accepted technical definition (Parr's formula). This definition is for categorizing coal as lignite and has no relevance to the excess moisture issue. Once coal is determined to be lignite, moisture (or other impurities) will not be excluded from the gross weight of the lignite unless physically removed prior to sale, transfer of ownership, or use. Therefore, no revision is being made to the definition of anthracite, bituminous, and subbituminous coal.

Eligible lands and water. This term has been included to clarify what lands and water qualify for reclamation expenditures under Section 404 of the Act. One commenter requested OSM to "petition" Congress to remove the requirement that AMLR funds be used for "pre-Act scars only". This commenter wanted the States to have discretion to select reclamation projects regardless of when they originated. OSM plans to consider this request if and when amendments to the Act are considered by Congress. For the present, however, both the Act and Congressional intent are clear that lands which were mined and abandoned or inadequately reclaimed after August 3, 1977, are not eligible for expenditures under Title IV of the Act. Congress, intended the States to administer regulatory programs that require adequate reclamation of surface mined land after August 3, 1977.

Expended. This term has been revised to provide that "expended" means that moneys have been obligated, encumbered, or committed for work to be accomplished or services to be rendered. The definition formerly used was the strict interpretation of Black's Law Dictionary: "to pay out or distribute". One commenter supported the change because it provides greater flexibility to the States. Another commenter opposed the change because the revised definition results in expanding "the language of the Act beyond that intended, which was actual expenditure." This commenter further contends that the effect of the revised definition will be to allow "hasty, unplanned commitments of funds" to avoid having these funds subject to withdrawal by the Director since, under Section 872.11(b), funds not expended by the States within 3 years of the date of their allocation may be withdrawn and used for other reclamation. This commenter further requested that, if the revised definition is not withdrawn, then it should be amended to include funds obligated, encumbered, or committed "in a planned manner pursuant to established priorities and criteria for reclamation." The purpose of this suggested amendment is, according to the commenter, "to insure that the commitments are made in a rational fashion."

OSM finds no basis for the commenter's assertion that the Act limits the word "expended" to mean only "actual expenditure" of funds. OSM has the responsibility to interpret the Congressional language in keeping with the Act and legislative intent. The revised definition of "expended" provides greater clarity and should encourage participation in the AMLR Program by providing the States with more flexibility in the management of AMLR funds. Congress intended the States to have primacy in the administration of their abandoned mine land reclamation programs and the revised definition advances this legislative mandate. Moreover, OSM believes that there are sufficiently stringent financial control procedures required by OMB Circular A-102 to prevent misuse of funds.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition. This definition was modified to eliminate the confusion between the findings of "eligibility" and those related to "abandonment" and "inadequate reclamation". One commenter pointed out that in the preamble discussion of the proposed revision (*46 FR 60780*) the impression was given that OSM makes the findings for eligibility for reclamation under Title IV of the Act for the Rural Abandoned Mine Program (RAMP). In order to clarify any possible misimpression, OSM's position is that the agency responsible for conducting the reclamation (State, Indian tribe, Department of Agriculture, or OSM) is also responsible for determining reclamation project eligibility under Title IV of the Act. This position does not, however, lessen OSM's responsibility for monitoring and oversight of reclamation programs required by Section 405 of the Act.

The revised definition provides sufficient latitude for the Federal agency or State/Indian tribe to exercise discretion on a case-by-case basis in its determination of eligibility for reclamation expenditures under Title IV. The following are examples of different applications of the revised definition:

Example 1 -- OSM considers lands and water eligible, if the following conditions are met: (1) All conditions in Section 404 of the Act are met; (2) All mining processes have ceased but a permit did exist as of August 3, 1977; and (3)

The permit has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance.

Example 2 -- Where a permit has lapsed prior to August 3, 1977, but subsequent reclamation attempts were made after that date to satisfy State regulatory or bond requirements, the area would still be eligible.

Example 3 -- (One commenter suggested that a third example should be given). OSM considers lands and water eligible if the following conditions are met: (1) Mining ceased prior to August 3, 1977, (2) No mining activity occurred or will occur after August 3, 1977; (3) A permit or bond exists as of August 3, 1977, and this permit or bond is released after all conditions are met; and (4) The land was inadequately reclaimed due to State requirements in existence at the time. These three examples illustrate the complexity of the factual situations faced by the reclamation authorities and the need to consider each project on a case-by-case basis.

Lignite coal. The comma after the word, "moist," has been deleted from the definition in the existing rules to correspond with the sentence structure in Title VII, Section 701(30). In addition, two commenters noted in the proposed definition that the word "Fund" should be replaced by "pound," that is, "less than 8,300 British thermal units per pound ." [Emphasis added]. That editorial revision has been made in the definition. One commenter recommended adding a sentence to the definition saying "this term does not include anthracite, bituminous, and subbituminous coal." Such language is both unnecessary and redundant. The definition of lignite is based on "Parr's formula" and is reprinted verbatim to avoid possible confusion or the need to further cross-reference. Moreover, anthracite, bituminous, and subbituminous coals are defined as "all coals other than lignite coal."

Operator. OSM is withdrawing this definition from the final rules and will be proposing a new definition in the near future. Until a new definition is finalized, OSM expects to follow its past policy of an expansive interpretation of the term "operator" when necessary to recover reclamation fees. See, 42 FR 62713 (December 13, 1977), comment No. 2.

Permanent facility. This is a new definition requested by the States in comments on the draft proposed rules. The definition clarifies and provides a more flexible way to define "facility" as it relates to structures and any modification of the surface designed to remain after reclamation.

Project. This is a new definition which should provide the States and Indian tribes the opportunity to define the scope of their projects in concert with their individual abandoned mine land problems and planning efforts. A project may be limited to a single construction site to remedy a single problem, such as filling an open shaft, or it may include more than one construction site such as mine openings, high walls, or denuded areas requiring revegetation. All these situations might be contained in a single watershed, soil conservation district, or county planning area. Since a State assumes exclusive responsibility for implementing its approved reclamation program, OSM has attempted to define this term to give the States and Indian tribes the greatest flexibility in designing individual reclamation projects.

One commenter supported the new definition because it uses, by way of example, a "conservation district" as a geographically defined area for purposes of project planning. Another commenter supported the new definition except for its reference to "political subdivision of a State". This commenter feels that planning and resource expenditures should be "based on planning designed in natural terms (e.g., watershed), and not artificial political parameters" like political subdivisions of a State. OSM disagrees with this commenter's suggestion to delete "political subdivision" of a State from the definition and deal only with natural boundaries, because a political subdivision (e.g., a conservation district) is a definable area that can be and is used for planning of programs and projects in the administration of the AMLR Program.

Reclaimed coal. The definition of reclaimed coal in the existing rules has been modified to reinforce OSM's position that such operations are subject to the reclamation fee requirements. The authority of OSM to regulate operators involved in the mining or processing of refuse coal has been upheld by the U.S. District Court for the District of Columbia. See *In re: Permanent Surface Mining Regulation Litigation*, No. 79-1144 (May 16, 1980). Since Section 402(a) of the Act requires "all operators of coal mining operations subject to . . . the Act" to pay reclamation fees and since the mining of coal from silt banks and refuse piles is considered a surface coal mining operation, the collection of the reclamation fee from these operations is proper.

One commenter objected to the inclusion of anthracite silt in the definition of reclaimed coal. This commenter asserted that: (1) Anthracite silt is not coal and (2) the removal or recovery of such silt from refuse piles does not constitute a

surface coal mining operation subject to reclamation fee payments. OSM is currently involved in litigation on these issues and will continue to assert authority and coverage over anthracite silt recovery as a surface coal mining operation until the issue is finally decided by the courts.

One commenter proposed that, for purposes of clarification, the final sentence in the definition of reclaimed coal be modified as follows: "Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes." OSM has incorporated this clarification in the revised definition.

Reclamation activity. One commenter recommended that the word "restoration" be deleted from the existing definition. OSM agrees that, in context, "restoration" gives the definition a meaning contrary to what was intended. Moreover, "reclamation" is sufficiently descriptive to convey the intent of that particular provision.

SECTION 870.10 (INFORMATION COLLECTION).

The information required by Part 870 is being collected to meet the mandate of Sections 401 and 402 of the Act, which requires the Secretary to establish an Abandoned Mine Reclamation Fund and a reclamation fee on coal mining operations. The obligation to respond is mandatory. The information collection requirements contained in Sections 870.12(c), 870.15 (b) and (c), and 870.16 (a) and (d) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029-0063.

SECTION 870.11 (APPLICABILITY).

Three revisions were made to Section 870.11. In Section 870.11(b), the term: "surface mining" has been changed to "surface coal mining operations" to clarify that both surface and underground operations are affected. In Section 870.11(d), OSM established a definite time frame for "extraction of coal incidental to the extraction of other minerals." Two commenters questioned OSM's authority to add the phrase, "in any twelve consecutive calendar months," since Section 701(28) of the Act does not include a specific time frame. However, OSM believes that the proposed language is necessary and proper and within the Secretary's authority to "* * * do all things necessary or expedient, including promulgation of rules and regulations, to implement the provisions of this title." (Section 412(a) of the Act). If no time frame is specified, incidental production would be subject to quarterly determinations of applicability, because production reports and fee payments are due quarterly, even though the extraction of coal over a longer period (e.g., 1 year or the life of the project) did not exceed 16 2/3 percent of the mineral tonnage removed. Moreover, the twelve consecutive calendar months is consistent with the 250-ton limitation included in the statutory definition of operator in Section 701(13) of the Act. Therefore, the twelve-month time frame in Section 870.11(d) is retained in the final regulation.

The third change to Section 870.11 is the addition of Section 870.11(e), which incorporates in the rules of Part 870 the statutory exemption from fee liability contained in Section 701(13) of the Act (definition of "operator"). One commenter suggested that this new paragraph specify extraction by a "person, partnership, or corporation." OSM believes that such an addition is unnecessary since identical language is included in the Section 870.5 definition of operator. The exceptions listed in Section 870.11 relate to "operations" and not individuals, partnerships, or corporations.

In addition, six commenters recommended other revisions to existing Section 870.11. One commenter suggested two editorial changes to clarify the introductory language, both of which have been incorporated in the final rules. The word "part" has been substituted for "chapter," and the lead sentence in Section 870.11 has been revised to read: "The regulations in this part apply to all surface and underground coal mining operations except * * *" to clarify that Part 870 applies to underground as well as surface coal mining operations.

Two commenters proposed a new Section 870.11(f) that would exempt reclamation operations from fee liability. OSM cannot accept the proposal for the same reasons outlined in the above discussion of comments relating to the definitions of "operator" and "reclaimed coal." Two commenters recommended that language be added to Section 870.11(c) to specifically exempt government-financed abandoned mine land projects from fee liability. Both commenters maintained that all proceeds from the sale of coal recovered as part of an approved reclamation project should be used to partially offset project costs. As discussed in the preamble of the proposed rules, application of fee liability to individual projects "* * * may or may not be appropriate." The determination of applicability of Part 870 to an individual project

will be made in light of existing or revised rules for Part 707. These Title V rules are mandated by Section 528(3) of the Act. Pending clarification of Part 707, OSM retains the current language in Section 870.11(c).

One commenter recommended that the word "or" be substituted for the word "and" at the end of Section 870.11(d) to make clear that any of the five conditions in Section 870.11 would exempt affected operations from fee liability. However, the word "and" is properly used since the introductory language clearly indicates that separate and distinct exceptions, not interrelated conditions, are listed.

SECTION 870.12 (RECLAMATION FEE).

In order to clarify the point in time of fee determination, as well as the value and weight parameters for calculating reclamation fees, OSM added Section 870.12(b)(1), (2), and (3). This new language restates OSM policy in effect since initial implementation of the fee collection program in December, 1977. Section 870.12(a) has been deleted, since it applies only to the fourth quarter of 1977. Four commenters objected to Section 870.12(b)(3) which prohibits the deduction of impurities, including water, from the weight of the coal unless physically removed prior to sale, transfer of ownership, or use. These commenters argued that the clarifying language should allow deductions for moisture content in excess of "inherent bed moisture." Two of these commenters proposed two alternative approaches for implementing their recommendation. One approach was the proposed revision to the definition of "anthracite, bituminous, and subbituminous coal," discussed above. The second alternative proposed was preamble language stating that "only inherent or natural bed moisture need be included in establishing the weight of the coal." Such language is contrary to established policy and the intent of the clarifying rule. Both the existing and proposed rules require that fees be paid on the actual weight of the coal sold. No fees are paid on impurities if these impurities are physically removed prior to sale. If moisture deductions were allowed, audit of operator records would be further complicated and laboratory analyses required to document moisture content. Moreover, such deductions could reduce fee collections by many millions of dollars over the 15-year life of the Fund. A third approach recommended by one of the above commenters was to allow moisture deductions by operators in those States where similar deductions are allowed for State coal severance tax purposes. At present, only the State of Alabama allows such a deduction and only when accompanied by laboratory analysis. OSM believes that acceptance of this approach would be inconsistent with requirements for uniform application of Part 870 and equitable treatment of all operators. Furthermore, given the wide variety of State severance tax structures and the lack of any legal relationship between State taxes and Federal reclamation fees, OSM believes this approach could result in considerable competition among States and encourage similar proposals for other deductions inconsistent with the objectives of the Abandoned Mine Reclamation Fund.

Based on the lack of clear policy and rules concerning the deduction of excess moisture, OSM has included the clarifying language as proposed in Section 870.12(b)(1), (2), and (3) in the final rules.

SECTION 870.13 (FEE COMPUTATIONS).

The examples in existing Section 870.13 (a), (b), (c), and (d) were proposed to be moved from the regulations to the Federal Register preamble to these rules. One commenter objected to moving these examples and technical calculations from the main body of the rules to the preamble. The commenter maintained that shifting this explanatory material fragments what is "currently a coherent, compact regulatory package." However, OSM believes this change simplifies the rules and properly separates the actual rules from examples and technical information. Since no substantive changes are being made to Section 870.13 and the most frequently used computations can be simply expressed, this material is being included here, in the supplementary information section.

Under Section 870.13(a) on surface mining fees, if the value of a ton of coal is equal to or greater than \$3.50 per ton, multiply the number of tons produced in the calendar quarter by \$0.35. For example, if the tonnage is 1,000, then 1,000 tons X \$0.35= \$350, which is the fee. If the value of a ton of coal is less than \$3.50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1 (or 10 percent). For example, if the value of a ton of coal is \$2 and the tonnage is 1,000, then \$2 X 1,000 tons X 0.1=\$200, which is the fee.

Under Section 870.13(b) on underground mining fees, if the value of a ton of coal is equal to or greater than \$1.50 per ton, multiply the number of tons produced in the calendar quarter by \$0.15.

For example, if the tonnage is 1,000, then 1,000 tons X \$0.15=\$150, which is the fee. If the value of a ton of coal is less than \$1.50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1 (or 10 percent). For example, if the value of a ton of coal is \$1 and the tonnage is 1,000, then \$1 X 1,000 tons X 0.1=\$100, which is the fee.

Under Section 870.13(c) on surface underground mining fees for lignite coal, if the value of a ton of lignite is equal to or greater than \$5 per ton, multiply the number of tons produced in a calendar quarter by \$0.10. For example, if the tonnage is 1,000, then 1,000 tons X \$0.10=\$100, which is the fee. If the value of a ton of lignite is less than \$5 per ton, multiply the value of a ton of lignite by the total number of tons produced in the calendar quarter by 0.02 (or 2 percent). For example, if the value of a ton of lignite is \$4 and the tonnage is 1,000, then \$4 X 1,000 tons X 0.02=\$80, which is the fee.

Under Section 870.13(d), in situ coal mining fees, if the Btu value of the in situ coal is determined to be 23 million Btu's per ton, then for every 23 million Btu's of gas produced at the wellhead, one ton of coal will be deemed produced for the purposes of this part. The Btu value of a ton of in-place coal shall be determined by analyses, certified by an independent laboratory, of the coal seam that is affected for potential Btu value of a ton of in-place coal. For anthracite, bituminous, and subbituminous coal the fee shall be computed as follows:

F=(G/C) X V1. For lignite coal the fee shall be computed as follows: F=(G/L) X V2. Where:

F=Reclamation fee.

C=Million Btu's per ton of coal in place.

L=Million Btu's per ton of lignite in place.

G=Gas produced at the wellhead in million Btu's.

V1=\$0.15/ton equivalent; or if the value of a ton of coal equivalent is less than \$1.50, multiply the value by 0.1 and substitute the result for V1, in the appropriate formula.

V2=\$0.10/ton equivalent, or if the value of a ton of lignite equivalent is less than \$5.00, multiply the value by 0.02 and substitute the result for V2 in the appropriate formula.

SECTION 870.15 (RECLAMATION FEE PAYMENT).

This section was changed to delete existing Section 870.15(b) which dealt with the fourth quarter of 1977. Existing Section 870.15(c) was redesignated Section 870.15(b) in the final rules and revised to reflect new form numbers in current use (OSM-1 and OSM-1A).

OSM had proposed revising in proposed Section 870.15 the interest rate on delinquent payments to equal the adjusted prime rate (as determined by the Federal Reserve) for the month of September. According to the proposed formula, the current rate would be increased from 12 percent to 20 percent from the effective date of these rules until February 1, 1983. Four commenters objected to the higher interest rates and two commenters questioned OSM's authority to exceed the current Treasury rate. Although OSM had planned to seek Treasury approval for the higher rate, recent discussions with Treasury Departmental officials indicate that their policy no longer includes exceptions to the government-wide rate established for overdue accounts. Therefore, OSM has withdrawn the planned increase and will retain the 12 percent interest rate specified in the existing rules.

A new Section 870.15(e) was proposed to require operators to submit "negative" reports for calendar quarters where no fee liability exists. Two commenters objected to this reporting requirement and questioned OSM's authority to require reports by operators with no fee liability. Section 412(a) of the Act authorizes the Secretary to "do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of this title." Section 402(c) of the Act makes it mandatory for all coal mine operators to submit a statement of the amount and type of coal produced and the method of coal removal, together with the reclamation fees payable to the Secretary for each calendar quarter. The statutory definition of "operator" (Section 701(13)) refers to "any person, partnership, or

corporation * * * who removes or intends to remove more than two hundred and fifty tons of coal from the earth * * * within twelve consecutive calendar months in any one location." A reasonable interpretation of the reporting requirement (which extends to those who merely "intend" to remove) would encompass production possibilities from zero tonnage upward. It should be noted the Section 402(d) of the Act provides for criminal penalties for failure to file and fraudulent reporting by operators.

With respect to the reporting burden imposed, it should be noted that, at the end of each calendar quarter, OSM mails to each operator (believed to be actively producing) a preprinted Form OSM-1. Of approximately 8,000 forms mailed, as many as one-half are not returned. OSM must currently verify nonproduction of these operators. While followup compliance checks verify zero production in most cases, approximately one-fourth of the "nonrespondents" are active operators and should have reported and paid fees on tonnage produced. Positive reporting, or affirmative reports of nonproduction, will reduce the need for followup compliance investigations and serve as the basis for collection and enforcement actions, when necessary. In order to further clarify the intent of this change, Section 870.15(e) has been deleted and the language added to Section 870.15(b) to require operators who receive Forms OSM-1 or 1A to report production, including zero tons.

SECTION 870.16 (PRODUCTION RECORDS).

No changes were proposed to this section. However, three commenters objected to the Section 870.16(d) requirement that operators "maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due." Actual truck receipts or weight tickets need not be kept for the full term, but normal business records, which include the information required by Section 870.16(a)(1)-(4), must be retained for six years in conformity with the Federal statute of limitations applicable to enforcement actions.

SECTION 870.17 (COMPLIANCE AUTHORITY).

This new section was added in the proposed rules to provide authority for examination of buyers' records of any first sale or transfer of ownership between operators or to other purchasers of coal. One commenter supported this change and one commenter objected. The commenter who opposed this section argued that OSM has no statutory authority to examine records of a "second party" involved in the sale of coal. OSM maintains that Section 412(a) of the Act provides the Secretary with sufficient authority to promulgate rules "necessary and expedient" to administer the provisions of Title IV. Since sales records maintained by the operator serve as the primary basis for production reports and determination of fee liability, purchasers, records represent an important secondary source of verification of the number and amounts of coal-sale transactions. Since virtually all coal sold is subject to the reclamation fee, lack of authority to review purchasers' records (including those maintained by coal tipplers) would greatly impede compliance investigations and audit activities of fee compliance officers. Accordingly, this requirement remains unchanged in the final rules.

PART 872 -- ABANDONED MINE RECLAMATION FUNDS

The U.S. Department of the Treasury established an account on its books in accordance with Section 401(a) of the Act and Treasury's rules for a fund of this type.

Moneys from the fund are available for the purposes of Title IV only when appropriated therefore and such appropriations are to be made without fiscal year limitations.

One commenter suggested that less restrictive use of Title IV mine reclamation funds in the Commonwealth of Pennsylvania would bring about the use of idle forfeited bond account moneys. It was suggested that these funds could be used to perform reclamation where it would otherwise not be undertaken because of insufficient funds. OSM's response is that Section 404 of the Act states clearly that lands and water eligible for reclamation are those abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing responsibility under State or other Federal Laws. Accordingly, no changes have been made. For further discussion on eligibility, the reader is referred to the preamble discussion in Section 870.5 on the definition of "left or abandoned in either an unclaimed or inadequately reclaimed condition."

One commenter suggested that the Abandoned Mine Reclamation Fund should be administered as a "trust fund" in accordance with applicable standards regarding the recovery of delinquent payments and the earning of interest on

unspent portions of the fund. OSM's response is that a determination has been made by the Department of Treasury that the Abandoned Mine Reclamation Fund is a special fund under Treasury rules. The Department of Treasury does not pay interest on special accounts unless specific legislation requires it. OSM has retained the proposed language unchanged in the final rule.

The following explanation of the fund management process is included to aid understanding to the purpose of Part 870. The U.S. Bureau of Mines' (BOM) Finance Branch in Denver, Colo., is currently OSM's agent for the collection of fund revenues. BOM, through a reimbursable agreement with OSM, is responsible for providing accounting and automatic data processing services to implement and maintain a reclamation fee collecting system. These services include (1) collecting and depositing reclamation fees into a depository, (2) providing an automated information system for fee payments, delinquencies, and program management, and (3) reconciling procedures to make annual allocations of collections for appropriation and use by States and Indian tribes under approved reclamation programs.

Fund revenues are derived from reclamation fees on each ton of coal produced and from late payment interest charges, sales of acquired lands, and donations. The fees and interest charges are paid by coal mine operators and submitted with production and reclamation fee reports for payment identification and credit to OSM's Fee Collection and Assessment Unit.

Funds collected are controlled by deposit tickets (prepared by the collection officer), debit vouchers issued by the Federal depository for uncollected checks, and refund schedules for overpayment (prepared by the Bureau of Mines Finance Branch). These transactions are identified by mine operators as well as by mine and geographic location. Data from OSM approved forms OSM 1 or 1-A submitted by mine operators with their payment are coded and stored in OSM's ADP system for compliance and disbursement purposes. Net collections (per deposit tickets, debit vouchers, and refund schedules) are reconciled on a monthly basis with the amounts reported by mine operators on OSM's approved forms.

All accounts are closed at the end of business each September 30, the final day of the Federal fiscal year (FY). The System is reconciled and collections are identified by State and Indian lands. Fifty percent of the FY collection is reserved for use by States and Indian tribes to carry out approved reclamation programs. The remainder may be expended by the Secretary of the Interior through the Director, OSM, to meet the objectives of Title IV. Any errors found in prior year allocations are corrected in current allocations. This financial information provides one of the bases for budget requests to support Title IV programs.

One commenter suggested a revision in proposed Part 872 to clarify to the public that abandoned mine reclamation funds may also be expended through RAMP by the Secretary of Agriculture. OSM considered this revision unnecessary on the basis that Section 401 of the Act clearly defines the transfer of funds by the Secretary of the Interior to the Secretary of Agriculture.

The part has been considerably shortened by deleting in their entirety Section 872.2 (Objectives) and Section 872.4 (Responsibilities), moving Section 872.5 (Definitions) to Part 870 of this chapter, and combining Sections 872.12 and 872.13 (State and Indian Abandoned Mine Reclamation Funds) into one section. A major change to the existing rules is a new Section 872.11(b)(2)(ii) that provides States with a commitment by OSM that will afford States every opportunity to use allocated moneys.

SECTION 872.1 (SCOPE).

This section has been changed to reflect the deletions of unnecessary language.

SECTION 872.2 (OBJECTIVES).

This section has been deleted in the final rules since the Act provides an overview of the Abandoned Mine Land Reclamation Program, and the detailed procedures relative to management of program funds are covered in the final rules.

SECTION 872.4 (RESPONSIBILITIES).

This section has been deleted in the final rule due to OSM's reorganization. Three commenters suggested that OSM publish information on functions and responsibilities as part of the final rules. OSM will consider amending rules in the future if there is a need for the information.

SECTION 872.5 (DEFINITIONS).

Definitions were moved to Part 870 of this chapter in the July 17, 1981, draft of the proposed rules to provide easy reference for all definitions of Subchapter R of this chapter. The definitions remain in Part 870 in the final rules.

SECTION 872.10 (INFORMATION COLLECTION).

The information required by Part 872 is being collected to meet the mandate of Sections 401 and 402 of the Act, which requires the Secretary to establish an Abandoned Mine Reclamation Fund and a reclamation fee on coal mining operations. The obligation to respond is mandatory. The information collection requirements contained in Section 872.11 (b)(2) and (b)(3) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029-0054.

SECTION 872.11 (ABANDONED MINE RECLAMATION FUND).

Two commenters suggested that OSM seek congressional action to have the Abandoned Mine Reclamation Fund placed in an interest-bearing account or fund rather than a "special account." OSM will take this suggestion under advisement. Except for the deletion of the reference to Part 882 of this chapter, Section 872.11 (a) and (b)(1) remain the same in the final rules.

Section 872.11(b)(1) remains the same. A new paragraph (ii) has been added to existing Section 872.11(b) (2) and (3). This addition is the result of the following activities:

The Interstate Mining Compact Commission (IMCC), on behalf of member States, petitioned the Director, Office of Surface Mining (OSM) to initiate rulemaking procedures that would amend Section 872.11(b) to preserve States' 1978 and 1979 reclamation fee allocations for an additional 3 years. This amendment would prevent the Director, OSM, from using these funds during this period, while guaranteeing their availability for States' use under approved reclamation programs. The existing rule allows the Directors to use States' allocations if they have not been granted within 3 years after allocation. OSM believes that the proposed amendment might contravene the intent of Congress as set forth in section 402(g)(2) of the Act. This section provides the Secretary with discretionary authority to utilize in any section of the country funds allocated to the States but not expended within 3 years. Recognizing the merits of the petition, however, OSM modified the draft of the proposed rules to satisfy the States' concerns without jeopardizing the Secretary's authority by adding a new paragraph (ii) under Section 872.11(b) (2) and (3) to provide that funds not expended in three years will not be withdrawn from the State/Tribe if the State/Tribe has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

Twelve commenters requested that OSM modify the proposed rules to insure that the States are able to obtain allocated State funds when there have been unavoidable program delays and grants have not been made for the full amount of funds allocated to the States. OSM's response is that it cannot through the rulemaking process change the statutory authority provided to the Secretary in Section 402(g)(2) of the Act. Therefore, the substance of Section 872.11(b)(2) of the proposed rules is retained unchanged in the final rules. It should be emphasized, however, that the Secretary may choose not to exercise this authority.

One commenter stated that the language proposed in Section 872.11(b)(2)(ii) was unnecessary, burdensome, and duplicative and recommended that the following clause be added:

"(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities; provided that unavoidable delays in program approval shall not be considered avoidable delay."

OSM's response is that it has retained the substance of the proposed language in the final rules on the basis that this language clearly defines the conditions under which OSM will not withdraw granted funds and does so without

jeopardizing the Secretary's authority.

Section 872.11(b)(3). The term "Indian lands" was changed in error to "Indian reservation" in earlier drafts. This error was corrected in these rules. One commenter suggested that use of "Indian lands" instead of "Indian reservation" is not accurate. See the preamble to Part 888 for a discussion of use of "Indian lands" as opposed to "Indian reservations". OSM has decided to continue to use the term "Indian lands" since Congress has not decided the question of the jurisdictional status of Indian lands outside the exterior boundaries of the Indian reservations, and because section 710 of the Act uses the term "Indian lands" in discussing the jurisdictional question.

Section 872.11(b)(5). Paragraph (b)(5) has been changed in the proposed rules to reference the applicable statutory provisions rather than cite specific uses. One commenter requested revision of the rules to clearly specify how the "Federal share" funds are to be used and to maintain complete disclosure and accountability for such expenditures. OSM's response is that it recognizes that the changing character of the AMLR program resulting from State assumption of AMLR responsibilities, together with Congressionally requested reductions in the number of AMLR delivery mechanisms, has resulted in a need to clarify policy. These policies and procedures which provide for the use of "Federal share" moneys will be developed. OSM anticipates developing and publishing new policy statements before the end of 1982. Accordingly, no change has been made in the final rule.

One commenter suggested that the language used in proposed Section 872.11(b)(5) would allow the Director to recommit funds withdrawn from the State back to that State to expend under Section 401(c)(8) of the Act and that this is clearly not the intent of Section 402(g)(2). This commenter suggested that the language should be amended to avoid potentially endless cycling of funds back into State allocations. OSM has retained unchanged the language of the proposed rule in the final rules because, in OSM's view Section 402(g)(3) of the Act allows the Secretary to expend discretionary moneys on specific reclamation projects which are considered the best means of accomplishing the objectives of the Act. The Secretary could decide on a case-by-case basis, regarding the propriety of disbursements to a particular State to accomplish the purposes of the Act. No endless cycling of funds would occur.

One commenter stated that the best means for reclaiming land in the State of Illinois is through the State program and that this significant determination should be published for public comment. OSM's response is that this determination will be considered by the Secretary in making decisions regarding where and how discretionary funds can be best utilized.

One commenter suggested that proposed Section 872.11(b)(2)(ii) leaves too much discretion because "reasonable effort" and "unavoidable delay" are left open for interpretation. OSM's response is that the broad range of possible efforts and possible delays which may be experienced among the States and Indian tribes requires individual analysis by OSM based on a careful review of the facts. For this reason, the proposed language has been retained unchanged in the final rule.

Section 872.11(c). One commenter suggested that the use of fund moneys should be clearly defined in the rules as follows: "(c) Moneys deposited in the State Fund shall be used to carry out the reclamation plan approved under 30 CFR Part 884." OSM agrees and has made the suggested change for clarification. OSM has expressed the intent of the suggested language as follows in the final rule: "(c) Money deposited in State or Indian Abandoned Mine Reclamation Funds shall be used to carry out the reclamation plan approved under 30 CFR Part 884 and projects approved under Part 888."

SECTIONS 872.12 AND 872.13 (STATE AND INDIAN ABANDONED MINE FUNDS).

These sections were combined in the proposed rules into Section 872.12 to eliminate duplication. Also, extraneous language was deleted. No changes have been made in the final rule.

One commenter suggested deleting the requirement in proposed Section 872.12(a) to manage funds in accordance with OMB Circular A-102. OSM's response is that the Circular A-102 was required by the Intergovernmental Cooperation Act of 1968 (82 Stat. 1101) and has therefore been retained in the final rules.

PART 874 -- GENERAL RECLAMATION REQUIREMENTS

Part 874 sets forth requirements relating to project eligibility and reclamation objectives and standards that are applicable to the federal government's direct reclamation activities. All references to State and Indian reclamation programs have been deleted from Part 874 in the final rules because Title IV of the Act clearly sets forth the reclamation requirements binding on these programs.

SECTION 874.1 (SCOPE).

One commenter noted that proposed Section 874.1 incorrectly indicates that Part 874 establishes requirements for project selection and evaluation standards which the proposed rules deleted. OSM agrees that it inadvertently retained the reference to project selection and evaluation standards in the proposed rules. Section 874.1 has accordingly been modified in the final rules to indicate that the scope of Part 874 is establishing land and water eligibility requirements and reclamation objectives and priorities.

SECTION 874.11 (APPLICABILITY)

Section 874.11 (Applicability) was modified in the proposed rules to limit Part 874 to those programs administered by OSM or as part of the Rural Abandoned Mine Program (RAMP). One commenter found the language of proposed Section 874.11 to be "somewhat confusing" and requested that a statement be added that specifically excludes the States from the purview of Part 874. OSM does not agree since all of the parts that constitute Subchapter R and their respective preambles have applicability sections that indicate what programs are specifically covered by each part.

Two commenters opposed the deletion of the State/Indian AMLR programs for proposed Section 874.11 for different reasons. The first commenter indicated that Part 874 must apply to the States because the eligibility restrictions set out in existing Section 874.12 apply to State and Indian programs since they arise under Section 404 of the Act." The Secretary is charged by Section 201 (c)(2) of the Act with promulgating regulations to carry out the provisions of the Act and "the State program eligibility regulations must be consistent with those in Section 404 in order to be approvable under Section 405(d)." This commenter contends that it is "insufficient response by OSM to state that since the Act requires it, OSM need not repeat it in regulations." This commenter additionally believes that the Secretary has a "responsibility to interpret the congressional mandate, to implement rather than echo, and to enforce the Act, including establishing criteria for State programs." This commenter concluded by requesting that it should be specified in this rule that the State programs must restrict lands and water eligible "consistent with Section 874.12 and Section 404 of the Act. OSM disagrees that the State/Indian programs must be included in Part 874 because Section 404 of the Act is a clear mandate that does not need interpretation or repetition. One of the main objectives of this revision to Subchapter R is to eliminate duplication.

It is unnecessary to include the language of the Act in these rules. It is clear that State/Indian reclamation programs and grants cannot be approved by OSM unless AMLR projects meet the eligibility requirements of Section 404 of the Act.

The second commenter opposed the deletion of the State/Indian AMLR programs from proposed Part 874 because the "purpose of Part 874 was to provide uniform reclamation standards and objectives." The result of the deletion will be "a Federal standard and 29 State standards with a wide range in quality of completed reclamation." This commenter also believes that, if States and Indian tribes are allowed to develop their own standards, an area reclaimed under one program could be eligible for reclamation under a program with higher standards.

OSM does not agree with the commenter because it must implement the intent of Congress which requires that the State/Indian tribes that meet and maintain the standards of Title IV of the Act be given primary responsibility in administering the abandoned mine land reclamation program for their jurisdiction. OSM, under Section 405(i) of the Act, is charged with monitoring the progress and quality of the State/Indian reclamation programs and will ensure, through its oversight policy, that the State/Indian reclamation programs meet the objectives and standards of Title IV of the Act. Although the reclamation standards in existing Part 874 were deleted in the final rules and OSM recognizes that the quality of reclamation programs may now vary somewhat, OSM believes that giving the States primacy is consistent with the intent of Congress and will still result in an orderly reclamation effort of abandoned mine lands without duplication of effort. The States will have primary authority for establishing priorities and Federal projects will only be undertaken after

consideration of those priorities and negotiations with the States. Based on such factors, OSM believes that there will be no overlap of programs or duplication of effort.

This commenter also requested that, if the recommendation to not delete the States/Tribes from the purview of Part 874 is rejected, OSM delete the RAMP program from proposed Part 874. The reason given is that Section 406 of the Act has "considerably more detailed requirements for the RAMP program than are listed in Part 874," and, as stated in Section 406 of the Act and existing Section 872.1(c), the "regulations for implementation of the Rural Lands Reclamation Program are the responsibility of the Secretary of Agriculture." Moreover, this commenter contends that everything contained in proposed Part 874 is already incorporated in the RAMP rules and program and, therefore, if the States/Tribes are deleted, Part 874 is only needed for OSM's reclamation program.

OSM disagrees with the commenter because it considers Part 874 to be applicable to RAMP since Section 406 of the Act does not exclude RAMP from the provisions of Title IV or these rules. Accordingly, no change has been made in the final rules. Moreover, RAMP is a Federal reclamation program and cannot be excluded from the requirements of Part 874 like the States/Tribes to which the Secretary can give primacy under Section 405 of the Act.

OSM also believes that there should be a common standard for the Federal reclamation programs and centralization of program priorities to avoid duplication of effort and waste of limited funds.

RAMP has several features that set it apart from other Title IV reclamation programs, such as cost sharing formulas, acreage limitations, contractual land use covenants, Federal lands exclusion, and low priority projects. These features make RAMP more exclusive and less widely applicable than the other Title IV reclamation programs.

To the extent that priority one and two projects are identified by RAMP officials, OSM believes that such projects should be referred to the States for ranking and selection among all other eligible projects of the same priority for annual AMLR grants. This will ensure that the limited AMLR funds are utilized in the most cost efficient and timely manner, and it will avoid duplication of effort between State and Federal programs. In addition, it is consistent with this Administration's efforts to provide the States with primary responsibility for implementing and administering this type of program. Finally, it will allow RAMP to focus its attention on accomplishing the environmental projects (i.e. erosion control and conservation and development of soil and water resources) set out in Section 406 of the Act.
Section 874.12 (Eligible lands and water)

Existing Section 874.12 (Eligible lands and water) has been modified in the proposed rules to apply only to eligible coal land and water. Two commenters requested that, for the sake of increased clarity, the title and first phase of the section should have the word "coal" inserted to clearly distinguish this section from noncoal requirements. OSM agrees and has inserted the word "coal" into Section 874.12 of the final rules.

One commenter requested that proposed Section 874.12 be amended to make clear the "broad scope of eligibility specified in Section 404 of the Act, including consideration of fund money for facilities necessary to maintain an acceptable level of reclamation." Since the language and intent of Section 404 are clear and OSM wants to avoid duplication of the words of the Act in these rules, it has decided not to amend this section in the final rules.

SECTION 874.13 (RECLAMATION OBJECTIVES AND PRIORITIES)

Section 874.13 (Reclamation objectives and priorities) was modified in the proposed rules to exclude State and Indian reclamation programs. One commenter requested that the reference to the "Final Guidelines for Reclamation Programs and Projects," be deleted because the States should be permitted to establish their own criteria for reclamation project accomplishments. OSM's response is that Part 874 does not apply to the State/Tribal reclamation programs and therefore it is not necessary to delete the reference to the "Final Guidelines."

One commenter recommended that proposed Section 874.13 be amended to include the following: "That one of the highest priorities of the coal States be to utilize every method available to recover incidental coal and, in every case possible, to include Priority III highwalls which are in close proximity to Priority I and II sites in the project parameters, using Extended Depth Secondary Recovery techniques to maximize coal recovery and minimize surface disturbance." OSM cannot accept this request since it would amount to an endorsement of a specific method of incidental coal recovery. Such an endorsement is beyond the OSM's responsibility.

SECTION 874.14 (RECLAMATION PROJECT EVALUATION)

Section 874.14 (Reclamation project evaluation) was deleted in the proposed rules because the State primacy provisions of Section 101(f) and Section 405(d) of the Act give States responsibility for project evaluation under approved reclamations programs. One commenter opposed this deletion because the Secretary has the responsibility for assuring that State programs are in compliance with Section 405(a) of the Act. The Secretary is obligated to monitor the State programs under Section 405 of the Act and to do this he must be sure that the States have criteria for prioritizing reclamation projects consistent with Section 403 of the Act. This commenter contends that "monitoring after the fact" is not acceptable under Title IV of SMCRA. It is OSM's position that the State primacy provisions, Section 101(b) and Section 405(d) of the Act, give States the responsibility for project evaluation under approved State reclamation programs. All State programs must, therefore, contain provisions for project evaluation. The Secretary is only responsible for monitoring, under Section 405(i) of the Act, the progress and quality of the State programs and is, therefore, not bound to promulgate rules governing project evaluation for the States. The Secretary approves State standards for project evaluation under Section 884.13. If the States/Tribes do not meet their approved project evaluation standards, then the Secretary can, under Section 405 of the Act, withdraw his approval of the State/Tribal reclamation program. Accordingly, no change was made in the final rule.

PART 875 -- NONCOAL RECLAMATION

Existing Section 874.12(b) has been redesignated as Part 875 in the proposed rules to clarify requirements for noncoal mined lands. Part 875 establishes requirements for reclamation of noncoal mined lands and water conducted under Title IV by State and Indian Reclamation Programs.

SECTION 875.1

Section 875.1 establishes the scope of Part 875 as the land and water eligibility requirements for noncoal reclamation.

One commenter suggested there is a need for definition of "noncoal reclamation" and "noncoal lands" because it is unclear whether this part refers to lands affected by coal mining, but not actually mined, or to lands mined for minerals other than coal. OSM meant proposed Part 875 to apply to lands mined for minerals other than coal since Part 874 applies to lands mined or affected by coal mining activities. For clarity, OSM has decided to include new Section 875.11 (Applicability) in the final rules.

SECTION 875.12

Proposed Section 875.12 establishes the eligibility requirements for noncoal mined lands and water. OSM reviewed the legislative history of Section 409 and concluded that Congress intended that the eligibility requirements for noncoal reclamation be consistent with the statutory eligibility requirements contained in Section 404 of the Act (*30 U.S.C. 1234*) for coal mined lands and waters. Since the source of funds for all reclamation conducted under Title IV of the Act comes from a fee collected from coal mine operators, less stringent requirements for noncoal reclamation cannot be logically justified in fairness to the coal mine operators. Moreover, there is no basis in the legislative history of Section 409 (*30 U.S.C. 1239*) to justify a conclusion that Congress intended to allow funding for reclamation on noncoal mined lands and water abandoned after August 3, 1977.

Proposed Section 875.12(c) was necessary to clarify the meaning of the words "continuing responsibility" in Section 404 (*30 U.S.C. 1234*) of the Act. Continuing responsibility will be determined by State statutes and not by common law. In addition, the language was broadened in the proposed rules to allow lands to remain eligible if a forfeited bond is insufficient to conduct adequate reclamation. This is consistent with the interpretation of "continuing responsibility" as applied to coal mined lands.

One commenter suggested that proposed Section 875.12 be amended by requiring a finding, before a noncoal reclamation project is approved, that the land or water condition endangers life and property, constitutes a hazard to public health and safety, or degrades the environment. The suggested amendment would ensure that the primary goal of Title IV to reclaim abandoned coal mined lands is met. OSM does not consider the suggested amendment to be necessary because proposed Section 875.13 (Requirements for noncoal reclamation) requires that the provisions of Section 409 of the Act be met before a noncoal project is eligible for reclamation. Section 409 of the Act clearly requires a finding that a

noncoal project must constitute a condition that endangers life and property, is a hazard to public health and safety, or degrades the environment before it is eligible for reclamation assistance under Title IV of SMCRA. Since Section 409 is clear and incorporated by reference into Section 875.13 of the final rules, it is not necessary to repeat its mandate in the body of the regulation.

Two commenters suggested that proposed Section 875.12 be revised to provide for funding of noncoal projects only when there is both a necessity to protect the public health and safety and when all coal mine reclamation is accomplished. The commenters feel that since the reclamation fee which finances the AMLR program is collected from coal mine operators, it is "only fair" that coal mine reclamation be completed before any noncoal mine reclamation is undertaken. OSM cannot accept this suggestion because it is clearly contrary to the explicit wording and intent of Section 409 of the Act. As indicated in the previous paragraph, Section 409 and Part 875 set forth the conditions under which lands mined for minerals other than coal can be reclaimed under the provisions of Title IV of SMCRA.

SECTION 875.13

Proposed Section 875.13 is included to clarify that the requirements for noncoal reclamation are limited to those contained in Section 409 (*30 U.S.C. 1239*) of SMCRA. No change has been made in the final rules.

PART 877 -- RIGHTS OF ENTRY

Part 877 establishes procedures for OSM to obtain entry on private lands for purposes of carrying out reclamation activities. The rules state a policy preference for entry under a written consent from the owner rather than under the police powers provided in Sections 407 (a) and (b) and 410(b) of the Act. Non-consensual entry will be undertaken only after reasonable efforts have been made to obtain written consent.

SECTION 877.1 (SCOPE).

The final rules reinstate the reference to States or Indian tribes in the existing rules under an approved reclamation program because this requirement is included in section 407 of the Act. The proposed rules had deleted the requirement for States and Indian tribes to effect police power entry on private land for reclamation.

Four comments were received and are discussed as follows:

One commenter supported the emphasis on a closer working relationship with landowners in obtaining entry on private lands for reclamation.

Three other commenters pointed out that Section 405(d) of the Act provides that States are required to adopt provisions in accord with Title IV and in the specific case of entry under Section 407, States should be able to enter upon private lands by invoking the State's police power to protect the public health and safety. These commenters pointed out that the deletion of the States and Indian tribes from this section of the proposed rules was improper.

Under the circumstances, OSM agrees that the requirements of Part 877 apply to the States and Indian tribes as well as to OSM. Consequently, Section 877.1 (Scope) was changed in the final rules to include States and Indian tribes under an approved reclamation program. However, final rule Section 877.14 concerning emergency reclamation applies exclusively to OSM, its agents, employees and contractors.

The broad use of police powers for entry on private lands, authorized in the Act, is not controverted by stating a preference for landowners' consent for entry on private lands. OSM has taken a judicious approach to the use of police power entry on private lands. The States or Tribes are free to invoke the use of police powers to effect non-consensual entry consistent with the conditions that threaten the public health or safety and the provisions of the State's statutes for use of police powers.

SECTION 877.10 (INFORMATION COLLECTION).

The information required by Part 877 is being collected to meet the mandate of Section 407 of the Act, which provides for use of the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or

exploratory studies if the landowner's consent is refused or the landowner is not available. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory. The information collection requirements contained in Section 877.11 and Section 877.13(b) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029-0055.

SECTION 877.11 (WRITTEN CONSENT FOR ENTRY).

One commenter recommended that the wording of the second paragraph of Section 877.11 be changed to be consistent with the wording in proposed Section 879.12(c). This would provide for reasonable efforts to get landowner consent for entry before non-consensual entry by exercise of police power. Proposed Section 879.12(c) requires reasonable efforts be made to purchase before condemnation is begun. OSM has accepted the comment in the final rule as an improvement over "due care and deliberation".

SECTION 877.13 (ENTRY AND CONSENT TO RECLAIM).

Six comments were received on this proposed section.

One commenter suggested that proposed Section 877.13(a) should include noncoal as well as coal mining. This was not done because noncoal reclamation is treated separately in Part 875 of this chapter.

One commenter opposed the requirement for written findings in proposed Section 877.13 (b) and (c) where non-consensual entry will be made. The reason advanced was that Congress did not specify that the findings be in writing. OSM's response is that due to legal considerations, a written record should always be made to preserve a record of circumstances surrounding any non-consensual entry. No change was made in the final rule.

One commenter suggested that landowner consent in proposed Section 877.13 (b) and (c) should not be required for entry to conduct studies or exploratory work on private lands and that there is no requirement in the Act for findings of adverse effect to be made in advance of entry for studies or exploratory work. OSM's response is that due to legal considerations, a written record should be made in order to preserve the record of circumstances surrounding non-consensual entries. Accordingly, the final rule remains unchanged from the proposed rule.

One commenter suggested that the phrase "of 5 working days" be inserted in proposed Section 877.13(c) for notice to property owners after entry for emergency work. The phrase was not added in the final rule because entry for emergency reclamation is treated in Section 877.14.

A fifth comment noted that Paragraph (c) of proposed Section 877.13 was inconsistent with Paragraphs (a) and (b) and should begin: "(c) If consent is not obtained * * *" This has been included in the final rule.

SECTION 877.14 (ENTRY FOR EMERGENCY RECLAMATION).

One comment was received on proposed Section 877.14 suggesting that since the proposed notice requirements cause delay, all written requirements should be deleted for emergency situations.

As written, final rule Section 877.14 does not require landowner's consent but does state that OSM shall make reasonable efforts to notify landowners consistent with the emergency conditions at hand. OSM's successful experience in managing emergency situations supports the rule as written. Written findings are essential for record purposes and create no delay in emergency response capability.

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

Proposed Part 879 reflects several provisions of Title IV of the Act concerning the acquisition, use, and disposal of lands and water for emergency and reclamation purposes. States raised two general issues concerning this part of the proposed rules. These were: (1) Whether acquired land must serve recreation and historic purposes, conservation and reclamation purposes or provide open-space benefits exclusively and (2) what constitutes permanent facilities as mentioned in proposed Section 879.11 of the rules.

Sections 407, 409, and 410 of the Act provide that reclamation can be done on private property. Land acquisition by OSM, States and Indian tribes will be restricted to those situations where reclamation cannot be done without acquiring the land. In those cases, the Act spells out certain requirements; that is, the land will serve recreation and historic purposes, conservation and reclamation purposes or provide open-space benefits. This does not mean that the land must serve all these purposes or only these purposes. It is also not necessary that the total area continue to be used exclusively for reclamation purposes for an indefinite period of time. Land can be acquired for a variety of future uses. Multiple-use purposes should be encouraged, so long as such uses are not inconsistent with the reclamation objectives and as long as one of the uses meets one requirement in section 407(c) of the Act. Accordingly, the final rule remains unchanged.

The States asked that OSM provide a definition of "permanent facilities." This definition has been included in proposed and final rule Section 870.5. The term permanent facilities is given an expansive connotation and is defined in the final rule to mean any structure that is built, installed or established on the surface.

Two comments were received on proposed Section 879.11. One comment endorsed the interpretation that land use following reclamation will fulfill the requirements of section 407(c) of the Act if it meets any one of the recommended uses. The other comment endorsed a more restrictive interpretation that acquired land must meet only the beneficial uses of the Act; that is, recreation and historic purposes, conservation and reclamation purposes, or open-space benefits. We do not agree with a restrictive interpretation of land uses following reclamation. So long as one of the purposes of the Act is met, other land uses should be allowed. Section 407 of the Act does not restrict land uses and the word only is not used. One of the purposes of the Act, as set out in section 102, is to reclaim land for beneficial uses, not to restrict its use. Accordingly, final rule Section 879.11 remains unchanged.

SECTION 879.1 (SCOPE).

The proposed section has been modified to include emergency projects and to insure that State and Indian tribe acquisition procedures are included in their reclamation plans.

One comment pointed out a redundancy in proposed Section 879.1 in that the word "State" before reclamation program was unnecessary. This has been corrected in the final rule.

SECTION 879.10 (INFORMATION COLLECTION).

The information required by Part 879 is being collected to meet the mandate of Section 407 of the Act, which requires that a State/Indian tribe include in its State reclamation plan assurances that the acquisition, management, and disposition of eligible lands and water for reclamation and other designated purposes will be accomplished in a manner prescribed by the Act. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to be in compliance. The obligation to respond is mandatory. The information collection requirements contained in Section 879.11(b)(1), (b)(2), and (e)(3), Section 879.12(a), Section 879.13(b), and Section 879.15 (a) and (b) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029-0056.

SECTION 879.11 (LAND ELIGIBLE FOR ACQUISITION).

This proposed section included a new paragraph 879.11(b)(2). OSM reexamined Section 407(c)(3) of the Act stating "or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices" and concluded that it was not meant to apply to coal refuse piles in particular, but rather to emergency situations. Proposed Section 879.11(b)(2) provides the Secretary with the authority to acquire land in emergency situations where no other viable means are available to abate an immediate threat to human life.

One comment on proposed Section 879.11(b) indicated that acquiring property in emergencies was not intended by the Act and that policy power entry was the means to use in emergencies. OSM's response is that authority to acquire land in emergency situations is given in Sections 407(c)(3) and 412(a) of the Act. This authority provides the Secretary additional flexibility in abating emergency situations. Accordingly, no change has been made in the final rule.

Examples of permanent facilities in existing rule Section 879.11(a)(2) were deleted in the proposed and final rule since they are now included in a definition section in final Section 870.5. Existing Section 879.11(c) was changed in the

proposed rule to refer to Section 407 of the Act rather than to repeat the statutory requirements. Existing Section 879.11(d) was modified in the proposed and final rule to change a reference from Section 874.12(b) to Part 875, because reclamation on noncoal areas is now covered in this new part.

Two comments were received suggesting that the word "and" be changed to "or" in proposed Section 879.11(a)(1) if it is to be construed that acquired lands can serve any one of the purposes listed. OSM's response is that the word "and" is correct because it follows the language in Section 407(c) of the Act. A thoughtful reading will lead to the conclusion that any one of the purposes listed can be reasonably inferred. To require that any one tract of land will serve all the listed purposes would be unrealistic. Accordingly, no change was made in the final rule.

Two comments concerned proposed Section 879.11 (c) and (d). One concerned an incorrect reference to another section. This has been corrected in the final rule. The other asked if these two sections were restricted to OSM. OSM's response is that proposed Section 879.11(c) is limited to OSM because the Act limits land acquisition for housing purposes to the OSM. No change in the final rule has been made. In proposed and final Section 879.11(d), land acquisition for noncoal reclamation purposes includes States and Indian tribes.

SECTION 879.12 (PROCEDURES FOR ACQUISITION).

OSM emphasizes that there are basically two requirements for land acquisition: (1) Compliance with Section 407(c) of the Act; and (2) compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and Department of the Interior rules implementing this Act. States and Indian tribes may use procedures already in place as long as they are in compliance with items (1) and (2) above. There were no comments on this section. Accordingly, no changes have been made in the final rule.

SECTION 879.13 (ACCEPTANCE OF GIFTS OF LAND).

Existing paragraphs (a) and (b) of Section 879.13 were rewritten in the proposed rules to eliminate Federal requirements governing acceptance of gifts of land. If the gift is to the Federal government, the donor must comply with existing Department of the Interior rules. If the gift is to States or Indian tribes, the gift must be consistent with existing State or Indian tribal laws. No changes have been made to the final rule.

Two comments concerned proposed Section 879.13. Both comments noted that this section did not reflect the fact that land donations must meet the same criteria as any other land acquisition as well as the criteria for donations. This has been clarified in the final rule to show this requirement.

SECTION 879.14 (MANAGEMENT OF ACQUIRED LANDS).

One comment stated that the proposed rule should specify that moneys collected for user charges should be returned to the fund. This has been inserted in the final rule.

SECTION 879.15 (DISPOSITION OF RECLAIMED LANDS).

Six comments were received. Three supported the changes in the proposed rules. Two others pointed out redundancies in wording. One stated that title to acquired land in proposed Section 879.15(b)(2) should revert to OSM since the State would not want a reverter of title if it was not involved in the project. OSM's response is that title can only revert to the grantor under a deed. Consequently, if the State was not the grantor, it could not take title under a reverter. Accordingly, no substantive change has been made in the final rule.

PART 882 -- RECLAMATION ON PRIVATE LAND

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

SECTION 882.1 (SCOPE).

This Section 882.1 is retained as it appears in the present rules.

SECTION 882.10 (INFORMATION COLLECTION).

The information required by Part 882 is being collected to meet the mandate of Section 408 of the Act which establishes conditions for the application of liens and procedures for filing liens on private property. This information will be used by the regulatory authority to insure that the State/Indian tribe has sufficient programmatic capability to file liens under certain conditions. The obligation to respond is mandatory. The information collection requirements contained in Section 882.12(c) and Section 882.13(b) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029-0057.

SECTION 882.12 (APPRaisALS).

In proposed Section 882.12, OSM changed the requirement in the original rule requiring appraisals on all projects to one requiring appraisals only when the possibility of a lien cannot be disregarded. Nine comments were received regarding this section. Two issues are involved. The first is whether a real estate appraisal is required as the basis for waiver of lien for every reclamation project. The second issue is whether an appraisal should be conducted before or after completion of the project. Three commenters believe the modified requirement in the proposed rule for appraisal is too restrictive; two commenters believe it is too permissive, and one favors the modification. Two comments concern the requirement for an appraisal upon completion of reclamation. One comment opposes use of an independent appraiser. One commenter points out the redundancy of proposed Section 882.12(c). These comments are discussed below.

Three commenters expressed concern that the proposed Section 882.12 did not adequately clarify the existing regulatory language with respect to the requirement for appraisal in connection with a possible lien. They contend that there will be circumstances under which it can be determined, without benefit of an appraisal, that there will be a significant increase in the value of the property after reclamation or that the "reclamation primarily benefits health, safety, or environmental values of the greater community." Under such circumstances, they believe that appraisals are unnecessary and wasteful. OSM agrees that there will be many situations in which appraisals are unnecessary. Indeed, that is the reason the wording was changed in the proposed rule to require appraisals only when property may be subject to a lien. When the official responsible for the reclamation program can determine from available evidence that the primary benefit from reclamation is to the greater community or that it is clear that there will be no significant increase in market value, then the property is not subject to a lien and no appraisal is necessary. When there is any doubt that these determinations can be made without the basis of appraisals, then it must be considered that the property may be subject to a lien and appraisals must be obtained. In such cases, the appraisals would provide evidence supporting waiver of a lien when they show that no significant difference in value exists.

On the other hand, one commenter believes "the cart has been placed before the horse," that the only valid method of implementing Section 408(a) of the Act is to determine, by appraisal, if there is or is not a significant increase in property value. Three years of program experience have demonstrated that in many projects, prior to start of reclamation, it was clear that either the primary benefit accrued to the public good or there was no significant increase in value resulting from reclamation, or both. In such instances, a requirement for an appraisal is unnecessary to ensure that public funds are not being expended to benefit an individual property owner and, therefore, would be wasteful. For example, in a project which stops acid mine drainage from polluting a municipal water supply, purification of a public drinking supply is the primary benefit. It may be obvious that private land adjacent to the reservoir may appreciate in value as a result of the reclamation; however, the public health of the local population or user is the element primarily benefitted. Since a benefit accruing primarily to the public safety offsite is one of the justifications for waiver of lien in the existing rules, the increase in land value is secondary and no appraisal need be obtained.

Furthermore, the determination to be made is not simply whether the benefit occurs offsite. For example, in a project involving reclamation of barren, stripmined land having large, open, water-filled pits, drainage from the pits causes sediment to build up on an adjoining county road creating a traffic hazard. The offsite benefit is the permanent elimination of the traffic hazard. It must be compared to the benefit to the landowner in the form of increased land value, in order to determine where the primary benefit lies. However, the magnitude of the benefit to the owner which may result from enhanced market value may not be even reasonably estimated without appraisals. OSM, therefore, believe that the

proposed rule accommodates both situations and no change in this regard is required; however, we have restructured the paragraphs for clarity in the final rule.

Two commenters recommended either deletion or modification of the last sentence in proposed Section 882.12(b) to eliminate the requirement for appraisal after completion of reclamation activities when reclamation takes more than 6 months. An advantage is cited to estimating the increase in land value before the start of reclamation activities; the difference between the appraisal of the land before reclamation and after reclamation is the basis for any increase in value. OSM's own experience has shown that landowners want to know the extent of any lien which may be placed against their property. Otherwise, they are reluctant to grant permission for entry out of fear of the unknown amount of the future lien. Since OSM prefers to obtain written consent as a means for obtaining entry to reclaim, progress on some projects has been hampered.

OSM agrees that there is good reason to perform an appraisal of the market value of the land as if reclaimed, before the start of reclamation. However, the comments fail to recognize the landowner's point of view that the appraised value of the land as if reclaimed is based upon the assumption that the reclamation will be successful and enhance the value of the land. The landowner's apprehension is that the value of the reclaimed land will not increase to the extent of the appraiser's estimate. In such event, proceeds from the sale may be even less than the value of the land in its unclaimed state. The disparity may even be greater when appreciation due to time factors has taken place. OSM has, therefore, rewritten the existing section to require another appraisal of the land as reclaimed upon completion of reclamation activities. This updated appraisal will determine if the increase in value originally estimated has actually occurred. If a lower increase in value results, it will be the basis of the amount of the lien. An appraisal showing a higher increase in value will not be used in determination of a lien because this would defeat the purpose of implementing landowner consent. Thus, landowners have greater opportunity to be involved with project issues, such as right of entry, while assuring that the determination of the necessity of a lien or the amount of the lien will be done equitably.

One commenter wants the requirement for an independent appraiser in proposed Section 882.12(a) changed to permit staff appraisers of the responsible reclamation agency to perform appraisals for liens. This comment cannot be accommodated. Section 408(a) of the Act specifically requires that appraisals performed to determine the amount of a lien must be obtained from an independent appraiser.

One commenter points out that proposed Section 882.12(c) pertains to liens and therefore, should be made part of proposed Section 882.13. After a review of proposed Section 882.13(b), OSM finds that it contains essentially the same elements as Section 882.12(c). Proposed Section 882.12(c) has therefore been eliminated in the final rule.

SECTION 882.13 (LIENS).

Twelve comments were received on proposed Section 882.13. One commenter noted that, in situations where a lien will be filed, the landowner should be given the right to discharge or pay a lien prior to filing in the land records. The recommended language has been incorporated in the final Section 882.13(b).

Three comments were received concerning the change in proposed Section 882.13(a) that would give OSM, State or Indian tribe the discretionary authority to place or waive the lien. Two of these comments supported the change while the third comment argued that the use of the word "may" in Section 408 of the Act limited filing to those cases where a significant increase in value results. This commenter quoted the legislative history to the effect that "a lien is to be placed on the property for the value of the work in those instances when the reclamation results in significant increases in the property value." The legislative history reflects the fact that there was discussion of liens being placed on property for the value of the reclamation. However, in the final text of the Act the Congress provided in Section 408 that the lien shall not exceed the increase in the market value of the property as a result of the reclamation. Accordingly, OSM believes that proposed and final Section 882.13 correctly reflect the provisions of Section 408 of the Act and also provide guidance for waiver of lien. This commenter also disputed the proposed rule change in Section 882.13(a)(2) to allow States or Indian tribes to establish abandoned mine lands liens in accordance with State laws. With regard to the priority of the lien, OSM recognizes that liens are governed by existing State and Federal laws with which there must be compliance. An example of this is the State homestead laws.

One comment noted that the tax status of landowners who benefit from reclamation activities is still in question. This issue remains unresolved at this time.

One commenter asked about the waiver of lien if the cost of filing the lien exceeds the increase in fair market value. This provision (existing Section 882.13(a)(2)) was inadvertently left out of the proposed rules but has been added as Section 882.13(a)(4) in the final rules.

Three comments dealt extensively with the waiver of lien provisions in proposed Section 882.13(a)(3) where the reclamation will primarily benefit the health, safety, or environmental values of the greater community. These commenters made recommendations that OSM, State, or Indian tribe be allowed to make this determination in advance so that landowners will know for certain whether there will be a lien or lien waiver. We have accepted the recommendation and clarified final rule Section 882.13(a)(3) to reflect the fact that this waiver can be treated in this manner.

One commenter recommended that OSM delete the requirement in proposed Section 882.13(b) for filing by OSM, States or Indian tribes of an accounting of moneys expended for the reclamation work together with the lien. The reasons advanced are that providing an accounting is expensive and time consuming. Further, the Act provides that this "may," not "shall," be done. OSM acknowledges that Section 408 of the Act provides that OSM or a State or Indian tribe "may" file a statement of these reclamation costs together with the notarized appraisals. Accordingly final rule Section 882.13(b) was changed to reflect the fact that although notarized appraisals must be filed with the lien, OSM, States or Indian tribes may include a statement of reclamation costs.

PART 884-STATE RECLAMATION PLANS

Part 884 establishes the content of the State plan required by Section 405(b) (*30 U.S.C. 1235*) of the Act.

SECTION 884.1 (SCOPE).

OSM has decided to delete portions of existing Section 884.1 already contained in the Act. Existing Section 884.2 (Objectives) was deleted for the same reasons.

SECTION 884.11 (STATE ELIGIBILITY).

Section 884.11 has not been changed and remains necessary to clearly set forth the requirements of the Act.

SECTION 884.13 (CONTENT OF PROPOSED STATE RECLAMATION PLANS).

Since the information collection requirements of Section 884.13 now only applies to fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (*44 U.S.C. 3501 et. seq.*) and does not require clearance by the Office of Management and Budget.

At the request of States, existing Section 884.13 was substantially modified in the proposed rules. These modifications were as follows:

- Section 884.13(a) -- limits the opinion of the State's or agency's legal officer to the authority of the agency under State law to conduct the Title IV program of the Act.
- Section 884.13(c) -- the word "detailed" and the phrase "but not limited to" were deleted.
- Section 884.13(c)(1) -- the word "purposes" was substituted for the phrase "goals and objectives".
- Section 884.13(c)(4) -- combined public participation requirements for coal and noncoal reclamation and for public participation in the preparation of the State reclamation plan and deleted specific requirements as to how the States implement public participation.
- Section 884.13(d) -- was rewritten to preclude repetitious phrases.
- Section 884.13(e) -- was consolidated with proposed Section 884.13(c)(4).

-- Section 884.13(f) -- was redesignated (e), the phrase "derived from available data" was added, and the required map scale of 1:250,000 was deleted.

-- Section 884.13(f)(4) -- the requirement that the State reclamation plan contain a table summarizing the quantities of land and water proposed for reclamation was deleted.

-- Section 884.13(f)(5) -- deleted the required narrative descriptions of: sociologic and demographic characteristics; hydrology; flora and fauna; underlying or adjacent beds of commercially mineable coal and other materials and projected methods of extraction; and the anticipated benefits from reclamation.

The reasons for the above changes are discussed in the preamble to the proposed rules at *46 FR 60785-60786*.

One commenter supported all the changes to proposed Section 884.13 because they "aid in speeding the approval" of State reclamation plans by eliminating several unnecessary provisions with which the States must now comply.

One commenter requested that Section 884.13(b), which requires a legal opinion that the designated agency have the authority under State law to conduct the program in accordance with Title IV of the Act, be deleted because "it is not required" by the Act. OSM cannot accept this comment because Section 405(e) of the Act explicitly requires that each State reclamation plan contain the "legal authority" to perform reclamation work in conformance with Title IV.

One commenter supported the proposed Section 884.13(b) modification to limit the opinion of the State's or agency's legal officer to the authority of the agency under State law to conduct the Title IV program. Another commenter requested that proposed Section 884.13(b) be deleted because "it is not required" by the Act. OSM cannot accept this comment because Section 405(e) of the Act explicitly requires that each State reclamation plan contain the "legal authority" to perform reclamation work in conformance with Title IV.

One commenter suggested that proposed Section 884(c)(3) be amended to require that the State also coordinate its reclamation work with OSM's reclamation projects. This coordination was formally required by existing Section 872.4, which was deleted. OSM agrees that the States should be specifically required to coordinate with all reclamation programs and has, therefore, amended proposed Section 884.13(c)(3) to include OSM's programs.

One commenter contended that Section 102(i) of SMCRA requires that the State reclamation plan must provide for public participation and involvement in the State program operation and not just in its development and, therefore, opposed the proposed deletion of existing Section 884.13(c)(7). OSM's response is that it has not deleted the requirement for public participation and involvement in the State program operation. OSM merely proposed to combine, in order to avoid duplication and to add clarity, existing Section 884.13(c)(7) and existing Section 884.13(e) into one new proposed Section 884.13(c)(4) that requires public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

One commenter contended that the requirement of proposed Section 884.13(d) for a description of the purchasing, procurement, accounting system, and personnel staffing policies is "inappropriate" for inclusion in a State reclamation plan. For this commenter, these descriptions would be more appropriate in a grant agreement since then "only add bulk to the plan and very little to the comprehension of the plan by the public." OSM's response is that Section 405(e) of the Act requires that the State reclamation plan contain the State's "programmatic capability" to perform reclamation work in conformance with Title IV. OSM has decided that, in order for it to assess "programmatic capability," it needs a description of the State agency's purchasing, procurement, accounting, and personnel staffing systems. Moreover, by including these descriptions in the State plan, they will not have to be repeated every time a State requests a grant for funds to perform reclamation under Title IV. Accordingly, no change had been made in the final rules.

One commenter asked for the authority for requiring in proposed Section 884.13(d)(3) that purchasing and procurement systems to be used by the agency must meet the requirements of OMB Circular A-102. OSM's answer is that the Act provides for grants to the States and all Federal grants must conform to OMB Circular A-102 under the statutory authority of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577 (*42 U.S.C. 4201 et seq.*).

One commenter objected to the inclusion in proposed Section 884.13(e) of a general description of the reclamation activities to be conducted under the State plan, including known or suspected eligible lands and water within the State and a map showing their general location. For this commenter, Section 405(e) of the Act only requires the plan to generally identify the areas to be reclaimed and therefore Section 884.13(e) goes beyond the scope of the Act. OSM's response is that Section 403 requires more than just a description of the "areas to be reclaimed," but also "the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects * * *." Moreover, the Act requires that reclamation be accomplished according to the priorities set forth in Section 403. OSM has decided that in order to implement Section 405, and the requirement that it only fund abandoned mine land reclamation projects that meet the priorities of Section 403, it needs the information required by proposed Section 884.13(e). Otherwise, the State would be free to select projects without meeting the Congressional mandated priorities of Title IV. Accordingly, no change was made in the final rules.

One commenter wants proposed Section 884.13(f) deleted because the Act does not require the State reclamation plan to contain descriptions of the economic base, the esthetic, historic, cultural, and recreational values, and the endangered and threatened plants, animals, and their habitats. For this commenter, such descriptions are more appropriate to State grant applications. OSM's response is that the information required by proposed Section 884.13(f) is needed by OSM for it to meet the mandate of Section 702 of the Act that requires its action in approving the State reclamation plan to be coordinated with the requirements of other Federal laws. Moreover, OSM believes that it is more efficient to include the required information in the State plan rather than to require the descriptions every time a State requests a grant. The State grant application can then be limited to specific project site information. Accordingly, no change was made in the final rules.

SECTION 884.14 (STATE RECLAMATION PLAN APPROVAL).

One commenter requested that proposed Section 884.14(a) be amended to require that the Director either approve or disapprove a State plan or amendment within 60 or 90 days instead of only having to "act on the State plan or amendment in 90 days." OSM cannot accept this request since under Section 405 of the Act it must determine that a State complies with Title IV before it can approve a State reclamation plan. The failure of OSM to act within a specific time period on a submitted State reclamation plan cannot result in approval absent specific statutory authority that would so permit. OSM will strive to meet its goal of reviewing State reclamation plans within 90 days.

SECTION 884.15 (STATE RECLAMATION PLAN APPROVAL).

Since the information collection requirements of 884.15 apply to fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (*44 U.S.C. 3501 et. seq.*) and does not require clearance by the Office of Management and Budget.

SECTION 884.16 (SUSPENSION OF PLAN).

One commenter contended that in proposed Section 884.16 the OSM cannot substitute "suspension" for "withdrawal" of a State reclamation plan because "withdrawal" is required by Section 405(d) of the Act. OSM's response is that its purpose in substituting "suspension" for "withdrawal" is that it avoids the necessity of a State having to resubmit a new reclamation plan which OSM would then have to reapprove whenever OSM takes action against a State for failing to meet the requirements of either Title IV or V of the Act. OSM believes that "suspension" is sufficient to achieve the purposes of Section 405(d) of the Act. Accordingly, no change was made in the final rules.

One commenter requested proposed Section 884.16(c) be amended to require that the OSM decision on suspension of a State reclamation plan be conveyed to the State by mail with return receipt requested or by registered letter. OSM does not believe it is necessary to include such wording in the final rule because on a matter as serious as suspension of a State reclamation plan, it will ensure that its decision is conveyed and received by the State in the most expeditious manner.

PART 886 -- STATE RECLAMATION GRANTS

Part 886 sets forth the procedures and requirements for annual grants to States to conduct reclamation activities under their approved reclamation plans. Based on comments received from the States on the draft of the proposed rules, OSM decided to retain the major requirements for State reclamation grants in the form of Part 886 rules rather than in a separate publication.

State commenters requested exemption from the requirements of Office of Management and Budget (OMB) Circulars A-95 and A-102. Discussions with OMB concluded that such exemptions are not permissible under the authority of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577). However, OSM has attempted to minimize the reporting requirements imposed upon the States in the administration of grants under the OMB circulars.

SECTION 886.1 (SCOPE).

Proposed Section 886.1 indicates that the purpose of Part 886 is to set forth procedures for grants to States having approved reclamation plans. OSM's "Final Guidelines for Reclamation Programs and Projects" (*45 FR 14810-14819*) is included in order to provide program guidance. One commenter requested that the reference to the guidelines be deleted because they do not specifically pertain to grants but rather to individual projects. OSM has decided to retain the reference to the guidelines in the final rules because they pertain to the individual projects which are the subject of the grant request.

One commenter noted that the statement in proposed Section 886.1, that the guidelines should be utilized as appropriate, is confusing because the guidelines state that they apply to all projects under any program. For this commenter, proposed Section 886.1 seems to imply that some guidelines might now not be appropriate to be used by a State. OSM's response is that it agrees with the commenter that the use of the word "appropriate" can be confusing. It was not OSM's intent to imply that the guidelines may not be "appropriate." OSM believes that they are appropriate whenever they are applicable to reclamation projects and should be utilized by the States. OSM intended to say that the guidelines may not be applicable to all projects in all situations but where they are applicable they should be utilized. Proposed Section 886.1 has therefore been changed in the final rule to substitute the word "applicable" for the word "appropriate".

SECTION 886.2 (OBJECTIVES)

Existing Section 886.2 (Objectives) has been deleted in the final rule to avoid duplication with the Act.

SECTION 886.10 (INFORMATION COLLECTION).

The information required by Part 886 is being collected to meet the mandate of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) for the purpose of implementing the State/Indian tribes reclamation program. This information will be used by OSM to ensure that the State/Indian tribe complies with OMB Circular A-102 and sound principles of grants management. The obligation to respond is mandatory. The information collection requirements contained in Section 886.15(c), Section 886.17(b), Section 886.18(c), Section 886.23(a) and (b), and Section 886.24(a) and (b) were approved by OMB under *44 U.S.C. 3507* and assigned clearance numbers 1029-0016, 1029-0017, 1029-0054, 1029-0064, 1029-0068, 1029-0070, 1029-0072 through 1029-0079.

SECTION 886.12 (COVERAGE AND AMOUNT OF GRANTS).

Two commenters requested that proposed Section 886.12(a) be amended to include Federal agencies as well as State agencies and local jurisdictions to which the State reclamation agency can transfer funds for services and materials provided. OSM agrees and has amended Section 886.12(a) to allow transfer of funds to Federal agencies. This amendment will allow State reclamation agencies to utilize a Federal agency (for example, U.S. Forest Service or Soil Conservation Service) to carry out reclamation activities.

One commenter suggested that proposed Section 886.12(b) be amended so that indirect as well as direct costs are eligible for payment of services rendered by other agencies. The OSM agrees but notes that OMB Circular A-87 must be followed. This circular allows for reimbursement for costs incurred by agencies other than the grantee and sets forth the

rules and agencies other than the grantee and sets forth the rules and requirements pertaining to such reimbursement. OSM has, therefore, amended in the final rule the second sentence of proposed Section 886.12(a) by deleting the word "direct" and adding as reference to OMB Circular A-87.

One commenter requested that in proposed Section 886.12(b) the deleted language of the existing rule that "100 percent of the total agreed upon costs" be reincorporated because the phrase makes it clear as to the funding that can be approved by OSM. OSM's response is that the language was proposed to be removed because it is redundant. Section 405 (g) of the Act states that the Secretary will grant funds for reclamation. There is no provision in the Act for a matching fund grant for reclamation as there is for land acquisition (90 percent). Therefore, it is obvious that reclamation will be funded for 100 percent of total allowable costs. Accordingly, no change has been made in the final rule.

One commenter, while supporting Executive Order 12185 (use of fuels other than petroleum or natural gas in facilities constructed with AMLR funds), expressed concern that States will have to produce a "life cycle cost analysis" for each project. OSM's response is that it does not believe that compliance with the Executive Order will be a burden to the AMLR programs since almost all projects funded will be for reclamation. Moreover, the Executive Order does not require a "life cycle cost analysis" but only to the extent technologically and economically feasible, public facilities that are planned, constructed or modified in whole or in part with Federal funds should utilize fuel other than petroleum or natural gas.

One commenter requested that proposed Section 886.12(c) be amended by defining land acquisition costs to be "land costs, attorney fees, closing costs, and other related acquisition costs." OSM's response is that this amendment is not necessary. The proposal rule says that acquisition of land shall be approved for up to 90 percent of the costs. The related costs which the commenter lists are included. Otherwise, the rule would restrict approval to 90 percent of the purchase price. Accordingly, no change has been made in the final rule.

SECTION 886.13 (GRANT PERIOD).

One commenter contended that proposed Section 886.13 should not be construed to allow the Secretary to withdraw funds from a State if the State has not spent the funds in a given time period. OSM cannot accept this comment because it is bound by Section 402(g)(2) of the Act, which explicitly allows the Secretary to withdraw funds from States if they have not been expended within 3 years of their allocation. The Secretary has limited his power to withdraw funds as indicated in Section 872.11(b) of the final rules.

One commenter requested that proposed Section 886.13(a) be amended to read "shall not exceed 1 year" instead of "shall be for 1 year." The effect of the amendment would be to allow for an administrative grant of less than 1 year and thereby allow the first administrative grant to mesh with the State's budget system. OSM agrees and adopts the amendment in the final rule since it allows for increased flexibility to the States in the administration of their reclamation programs.

One commenter requested the following rewrite of proposed Section 886.13(b):

"(b) The Director may extend the grant period for specific projects beyond 3 years if he finds, on the basis of information contained in the grant application that: (i) Projects to be funded will complete all the objectives of Section 403 of the Act except coal impact assistance; or (ii) an extended period is necessary to accomplish the reclamation projects; or (iii) the grant requests funding for specific projects with adequate plans, acceptable deadlines for completion, and the likelihood of specific construction contracts to meet the project deadlines; provided that (iv) sufficient funds allocated to the State or tribe under 30 CFR 872.11(b)(2) are available to complete the projects."

The commenter emphasized that he deleted the last part of Section 886.13(b) which reads "including provisions for corrective works on completed projects and any additional eligible projects which may be discovered." The reason the commenter offered this deletion is that the Eastern States "may never, during the life of the OSM program, be in a position to say that they have no projections of additional eligible projects which may be discovered because of the vast magnitude of the abandoned mine problems within these States." The commenter concluded that use of the phrase in the rule will only serve "to constrain completion of projects which have projected construction periods of longer than 3 years."

OSM does not accept the suggested amendment. The reason why the existing Section 886.13 was proposed to be amended is, as stated in the preamble to the proposed rules (*46 FR 60786*), to address a petition to amend the grant period filed by the State of Wyoming. This petition requested that the project grant period be extended beyond 3 years if the objective of Sections 403 and 409 of the Act are completed. The effect of this extension would be to allow States to obtain grant funds for coal impact assistance under Section 402(g)(2) of the Act even though the last remaining priority reclamation projects of Sections 403 and 409 of the Act have not been actually completed provided that the conditions listed in Section 886.13(b) of the final rules can all be met.

The effect of the amendment which the commenter now proposes would be to extend the provision for grant funding beyond 3 years for all grants that meet any of the conditions of Section 886.13(b) instead of only those grants which seek funding for coal impact assistance in States which have commenced work on the last of the priority reclamation projects required by Sections 403 and 409 of the act and which meet all the conditions of Section 886.13(b).

OSM has decided that the suggested amendment which the commenter offers is not necessary since grant extensions can already be obtained under the provisions of final Section 886.17. The purpose of proposed Section 886.13(b) is to facilitate the consideration of coal impact assistance projects which would otherwise be delayed if all Section 403 and 409 reclamation projects had to be totally completed. The commenter's amendment is unacceptable because it would effectively avoid the provisions governing grant extensions contained in Section 886.17 and the requirements of OMB Circular A-102 referenced therein. In order to avoid any possible future "misunderstandings", OSM has decided to limit Section 886.13(b) of the final rules to grants requesting impact assistance funding and to amending the rule to so indicate.

SECTION 886.14 (ANNUAL SUBMISSION OF PROJECTS).

One commenter supported proposed Section 886.14 because OSM decided to limit the information requirements to Section 405(f) of the Act. Two commenters opposed proposed Section 886.14. The first commenter opposed the rule because he contends that Section 405(f) of the Act only applies to annual grant applications, the information required by Section 405(f) will "not be available thirty months in advance," and this information is not needed by OSM to justify its requests to Congress for appropriations for the State reclamation projects. OSM does not agree with this comment for the reasons which follow. First, OSM believes that it can require the information listed in Section 405(f) prior to a request for assistance from a State with an approved reclamation program because Section 405(b) of the Act entitles the Secretary to obtain information which is necessary to fulfill responsibilities under Title IV of the Act. Second, OSM does not require the information contained in Section 405(f) "thirty months" in advance. Section 886.14 specifically indicates that the schedule for providing the information shall be determined by OSM on an annual basis. Third, as indicated in proposed Section 886.14, OSM does need its information in order to justify to the Congress its requests for appropriations to fund the State reclamation programs and projects. In addition, OSM needs the information contained in Section 405(f) before the annual grant submission in order to justify its budget request to the Office of Management and Budget. It should be noted that proposed Section 886.14 seeks the cooperation of the States and only asks for estimates which can be refined when the States actually apply for reclamation project assistance. Without some general description of proposed projects and estimates of reclamation benefits, such as number of acres to be restored and costs of reclamation projects, OSM will not be able to justify its funding requests with the consequent detriment to the State reclamation programs' need for reclamation assistance. Accordingly, no change has been made in the final rules.

The second commenter opposes proposed Section 886.14 for the same reasons as the first and, in addition, contends that it is "virtually impossible for any State to provide the details of Section 405(f)" 22 months before it submits its annual grant application." This commenter also offers substitute language as follows:

The agency shall cooperate with the Office in the development of advance budget estimates for use by the Director in the preparation of the request for appropriation of moneys from the Fund. The schedule for such estimates shall be determined by OSM on an annual basis. Funds required to collect and submit data under this section may be included in administrative grants under 30 CFR 886.12.

OSM does not accept the comment or substitute language because, as indicated in the previous paragraph, it is only requesting estimates and not, as this commenter contends "details" of the information contained in Section 405(f) of the Act. OSM notes that it has not required the estimates of Section 405(f) 22 months in advance, as the commenter contends, but will cooperate with the States in preparing an annual annually arriving at a schedule for submission of the

needed estimates. OSM does not believe that the requirements of Section 886.14 are a burden on the States since it will, as indicated in Section 886.14, reimburse the States for the costs of obtaining the estimates.

SECTION 886.15 (GRANT APPLICATION PROCEDURES).

One commenter requested that proposed Section 886.15(a) be changed to limit the time in which OSM has to act on a grant application to 60 instead of 90 days. For this commenter, 90 days is too long because the State's abandoned mine land staff and their work activities are dependent on the approval of the grant application. In addition, if the State had to amend the application, that "would mean at least another 30 days, resulting in more than a 4-month delay." OSM response is that it needs 90 days in which to act upon a grant application. OSM will attempt to act upon grant applications as rapidly as possible. OSM suggests that States can avoid delay by working closely with OSM during the developmental stages of the application so that the grant application is complete and adequately supported and thus facilitate OSM's review and processing. Moreover, OSM strongly encourages the States to submit their grant applications more than 90 days before existing grants expire so that the continuity of their staff work will not risk interruption.

One commenter wants proposed Section 886.15(a) to be amended to require OSM to approve or disapprove a grant application in 90 days instead of having to act on a grant application in 90 days. OSM cannot accept this amendment because the Act does not allow failure to act on a grant application within a specified time period to be construed as either approval or disapproval of a grant. Federal funds cannot, absent specific statutory authority, be committed by default, but rather require a determination of the validity of their use.

One commenter requested that a time period be placed in proposed Section 886.15(a) on the preparation of the grant agreement. OSM does not believe that this is necessary since it construes the 90-day period in which it has to act on a grant application to include the preparation of the agreement. Accordingly, no change has been made in the final rule.

One commenter requested the following changes in proposed Section 886.15(d): (1) OMB Circular A-95 not be required, (2) the feasibility analysis be removed, and (3) the requirement for an environmental assessment for each project be deleted. The commenter wants compliance with OMB Circular A-95 not be required since the Act "assigns moneys to the different organizations conducting AML works," the Act already requires States to coordinate with other agencies, and provides for public participation. OSM cannot accept the commenter's deletion of Circular A-95 from proposed Section 886.15(d) because it is required of all Federal grants by Section 401 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577). As for the commenter's second request that the "feasibility analysis" be removed, there is no requirement in proposed Section 886.15(d) for a "feasibility analysis." The commenter also requested that the requirement for an environmental assessment be removed. OSM's response is that Section 886.15(a) does not require environmental assessments. Environmental assessments are a requirement of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-47).

One commenter requested that proposed Section 886.15(e) be amended to read: "Review and approval of project plans and specifications by OSM will not be required." The commenter's reason is that the existing regulations conveys "the impression that a State must receive approval of project plans and specifications for a project implemented under an approved State program." OSM cannot accept the commenter's amendment because proposed Section 886.15(e) implements the statutory mandate of Section 405(i) of the Act. OSM's position in proposed Section 886.15(e) is that complete plans and specifications are not required before the grant is approved, but OSM may review plans and specifications after the start of the project in order to fulfill its responsibilities under Section 405(i) to monitor the progress and quality of the State reclamation programs. Accordingly, no change has been made in the final rule.

One commenter requested that the second sentence of proposed Section 886.15 end with the word "Office" because an OSM representative should only visit the project site during construction at the invitation of the State agency under current OSM oversight policies. The Office disagrees and notes that under the mandate of Section 405(i) and 412(a), it has the authority to visit project sites without the invitation of the State agency. Accordingly, the final rule remains unchanged.

One commenter indicated that proposed Section 886.15(f) is unnecessary because each State plan already outlines public involvement and the regulation could be interpreted to require a very detailed description for every project. OSM disagrees Section 102(i) of the Act and OMB Circular A-102 mandate public involvement. OSM's policy is not to require

a detailed description of public involvement for every project but rather a general description that meets the approved State plan's requirements and OMB Circular A-102.

SECTION 886.16 (GRANT AGREEMENTS).

One commenter requested that in proposed Section 886.16(a) OSM impose upon itself a time limit to prepare a grant agreement. OSM believes the commenter's request is not necessary. The grant agreement is a simple administrative and clerical procedure that will be completed as rapidly as possible. OSM has already indicated in proposed Section 886.15(a) that it will act upon a grant agreement within 90 days of submittal. The preparation of the agreement normally would occur within this 90-day review period.

Two commenters requested that Federal agencies be included along with other agencies and local jurisdictions in allowing for transfers of funds under proposed Section 886.16(a)(4) and (b). OSM agrees and notes that this is consistent with its decision to make the same change to proposed Section 886.12(a). See preamble discussion of Section 886.12(a) for reason. The final rule has been changed accordingly.

One commenter indicated that the phrase "the grant is effective" in proposed Section 886.16(d) should be clarified. The commenter indicates that it could be interpreted as either that the terms of the grant become effective upon the date of the Director's signature or that the effective date of the grant is the date appearing in the terms of the grant agreement. The commenter indicated preference for the second interpretation for two reasons: 1) "the letter-of-credit cannot be processed until the Director has signed the agreement which means funds cannot be drawn down for 3 to 5 weeks" and 2) "the effective starting date of a grant should coincide with a State's payroll period." For this commenter, an effective date written within the grant agreement will allow a State better management of its program. OSM's response is that the effective date of the grant is the performance period specified in the grant agreement. The date of the Director's signature does not, therefore, determine the effective date. The States are responsible for requesting the performance period dates that best suit the management of their programs. Accordingly, this change has not been incorporated into the final rule.

SECTION 886.17 (GRANT AND BUDGET REVISIONS).

One commenter requested that proposed Section 886.17(a) be amended to provide that if the Director does not approve or disapprove of a budget revision within 15 days of its receipt, the budget revision will be "automatically approved." OSM cannot accept this amendment because the Act does not permit it and OMB Circular A-102 requires the Federal agency to act upon budget revisions. OSM will strive to act upon all budget revisions within 15 days.

One commenter requested proposed Section 886.17(b)(1) and (3) be amended to allow a State to revise its budget without OSM's approval if the increase or decrease in any project is "\$10,000 or 10 percent, whichever is greater" rather than "\$5,000 or 5 percent, whichever is greater." The commenter's reasons are "inflation and changes in costs due to weather" make the \$5,000 or 5 percent limit too low. OSM's response is that it has reconsidered its interpretation of the Circular A-102 requirement as it applies to reclamation grants under Part 886. OSM now believes that the \$5,000 or 5 percent limit, as applied to each project budgeted under a reclamation grant as proposed in Section 886.17(b)(1) and (b)(3), places an unnecessary burden on the States in the management of their reclamation projects. As the commenter indicated, inflation has made the \$5,000 or 5 percent limit stringent. Therefore, in order to provide the States with increased flexibility in the management of reclamation projects and to reduce the paperwork burden of having to seek written authority for minor changes in a project's budget, OSM has decided to interpret the requirement of OMB Circular A-102 to apply to the total grant amount and not to the amount budgeted for each project in a multi-project grant. Proposed Section 886.17(b)(1) and (b)(3) has therefore been changed accordingly in the final rules.

OSM is amending proposed Section 886.17(b)(1) to add the words "whenever the total amount of the revisions" in the final rules. The reason for this amendment is that the language is necessary to prevent a series of minor revisions of less than \$5,000 or 5 percent which would accumulate to more than the \$5,000 or 5 percent total limit on any grant. OSM has decided that this is not a substantive amendment and is intended to implement the requirement of OMB Circular A-102.

SECTION 886.18 (GRANT REDUCTION, SUSPENSION, AND TERMINATION).

One commenter requested that proposed Section 886.18 be amended to provide that OSM's decision on suspension, reduction, and termination of a grant be a final decision which is appealable to the appropriate court of law, instead of allowing the State the right to appeal OSM's decision to the Secretary. OSM does not agree with the commenter's amendment because it believes that, in order to avoid unnecessary litigation, a State should be allowed an administrative level of appeal beyond OSM. No change has been made in the final rule.

One commenter requested that note be made in proposed Section 886.(a)(2) of the extension permitted under proposed Section 886.13. OSM's response is that, even though it would not reduce a grant which it had agreed to extend because it would then not be expended within 3 years, OSM has decided to accept the comment in order to achieve consistency between proposed Section 886.13 and proposed Section 886.18(a)(2) and the final rule Section 886.13 has been amended accordingly.

One commenter contended that proposed Section 886.18(a)(5) and Section 886.18(a)(6) do not apply to employees of a State reclamation agency because of this chapter Part 705 only covers employees of State surface mining regulatory agencies. OSM disagrees because it is clear that in Section 517(g) of the Act of Congress intended that any State employee performing any function or duty under the Act shall not have an interest in a coal mining operation. Moreover, of this chapter 705.5 defines State regulatory authority as including responsibility for reclamation as well as regulation of coal mining. Therefore, OSM has concluded that it is the intent of Part 705 to include employees of State reclamation agencies under Part 705 provisions in restrictions on financial interests of State employees. No change was made in the final rules.

SECTION 886.19 (AUDIT).

One commenter requested that in proposed Section 886.19, the phrase "audit guides of the Department of the Interior" be removed because these guides are "excessive". OSM's response is that since the publication of the proposed rules, the audit guides of the Department of the Interior have been superseded by audit guides provided by the General Accounting Office and by the "Approved Compliance Supplement" issued by the OMB. The final rule has been amended to reflect this change. OSM notes that it is bound by current U.S. Government and Department of the Interior policy on audit procedures in the administration of its grant programs.

SECTION 886.23 (REPORTS).

Five commenters opposed the quarterly reporting requirements of proposed Section 886.23, and one commenter requested that quarterly reports only apply to States with annual grants of over \$3 million. Four commenters requested annual reporting only, and two commenters requested semiannual reporting. The reasons given for opposing quarterly reports were:

- (1) Quarterly reports "interfere with State programs";
- (2) OSM "should be sufficiently informed" of a State's work that annual reports need only be required;
- (3) Quarterly reports are "excessive";
- (4) Quarterly reports are not practical because projects usually take 3 months to get started;
- (5) Quarterly reports are "unnecessarily burdensome on the States and of little value to OSM" because in the "duration of AML projects there will not be significant changes on a quarterly basis";
- (6) Quarterly reports are "not specifically required by OMB";
- (7) The "SF 183 (form that reports drawdowns on letter of credit) is sufficient to allow OSM to monitor" the progress of the State reclamation projects; and
- (8) Quarterly reports are "inconsistent" with the Federal Government's current regulatory reporting requirements."

OSM has reconsidered its proposed requirement for quarterly reports and now believes that semi-annual reports will be sufficient for purposes of monitoring the progress of reclamation performed under its reclamation grant program. In keeping with the provisions of circular A-102, may require more frequent reporting whenever the State's management system is not able to achieve the grant, an applicant or recipient has a history of poor performance, or in any other circumstances where more frequent reporting would advance the goals and objectives of Title IV of the Act.

The reasons why OSM now believes that semi-annual reports are sufficient are as follows:

(1) Under its reorganized administrative structure, OSM, through its newly created State Offices, will be able to more efficiently monitor and work with the States in accomplishing abandoned mine reclamation and therefore, frequent reporting will not usually be necessary;

(2) OSM's extensive review of State Reclamation Plans under Part 884 of this subchapter assures that States with approved abandoned mine land reclamation plans have legal and administrative capacity to accomplish reclamation in keeping with the goals and objectives of Title IV of the Act; and

(3) OSM's oversight policy will assure that States maintain progress in achieving the goals and objectives of Title IV of the Act.

One commenter requested deletion of the cumulative annual report required by proposed Section 886.23(b)(2) and replacement with a requirement that the States only need report changes in status since their last report. The OSM cannot agree because proposed Section 886.23(b)(2) is the annual report which the OSM must obtain from the State reclamation agencies under Section 405 of the Act.

PART 888 -- INDIAN RECLAMATION PROGRAMS

Part 888 establishes interim procedures for identifying and conducting needed reclamation work on Indian lands. OSM did not propose change to the existing Part 888 rules but indicated that it would consider comments. OSM has made one minor change to final Part 888. In proposed Section 888.11(c), costs of projects undertaken during the interim period before final plan approval could be charged against monies allocated to the Tribes under Section 402(g)(2) of the Act. A State's or a Tribe's 50% share of the AML fund, however, cannot be utilized under the limitation in Section 405(c) of the Act until a reclamation program is approved. To rectify this situation, the final states that projects undertaken during this interim period will utilize funds from OSM's discretionary share.

Two commenters requested that the term "Indian lands" used in Part 888 be changed to "Indian reservation." These commenters contend that, while Congress deferred its decision with regard to Title V jurisdiction on Indian lands until such time as the Secretary of the Interior presented draft legislation, with regard to the Abandoned Mine Land Program in Title IV, Congress was specific in its allocation of funds between the States and Indian tribes. These commenters point out that Sections 402(g)(2), 409(b) and 409(c) of the Act use the term "Indian reservation" to indicate the proper scope of allocations to Indian tribes for abandoned mine land reclamation projects. These commenters contend that it is "inappropriate" for the abandoned mine land reclamation rules to allocate funds in a manner which disregards the Act. Additionally, a distinction between "Indian lands" as used in Title V and the term "Indian reservation" as used in Title IV is reasonable given that an allocation of actual funds being currently generated is necessary under Title IV, while Congress has not yet decided to make ultimate jurisdictional decisions under Title V. OSM believes that Part 888 does not concern allocation of Abandoned Mine Land Reclamation Funds collected on either "Indian lands" or "Indian reservations" but rather the interim procedures for Indian AMLR programs. The question of the jurisdiction of the Indian tribes to regulate surface mining on Indian lands or reservations under Title V is the same for regulation of abandoned mine land reclamation under Title IV. Until Congress decides the jurisdictional issue, OSM cannot promulgate final rules governing Indian AMLR programs. The fact that Congress used the term "Indian reservation" in Sections 402(g)(2) and Section 409 with regard to allocation of funds does not, as the commenters assume, require OSM to use the same term in its interim rules on Indian AMLR programs. Since Congress has not decided the question of the jurisdictional status of Indian lands outside the exterior boundaries of Indian reservations, and because Section 710 of the Act uses the term "Indian lands" in discussing the jurisdictional question, OSM has decided to continue to use the term "Indian lands" in Part 888.

Determination Under Executive Order 12291, the Regulatory Flexibility Act and the National Environmental Policy Act

The Office of Surface Mining has examined this rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981), and determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination of the regulation revisions are as follows:

1. Approval will not have a major effect on costs or prices for consumers, individual industries, Federal, State or local Government agencies or geographic regions;
2. Approval will not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act *5 U.S.C. 601 et. seq.*, and OSM has determined that the rule will not have a significant economic impact on small entities. The revisions do not alter the statutory fee collection requirements or the disbursement of Abandoned Mine Land funds to States or Tribes. In addition, agency policy and statutory mandates requiring the utilization of small and minority businesses, when possible, remain unchanged. The revised rules will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs and aggregate effects on small entities.

Environmental Assessment: OSM has prepared a final environmental assessment (EA) on this rule that reaches the conclusion that this rule should not significantly affect the quality of the human environment. The final EA is on file in the OSM Administrative Record, Room 5315, 1100 L St., NW., Washington, D.C. 20240.

LIST OF SUBJECTS IN 30 CFR

Part 870

Coal mining, Reporting requirements, Surface mining, Underground mining.

Part 872

Coal mining, Indian lands, Reporting requirements, Surface mining, Underground mining.

Parts 874 and 875

Coal mining, Indians -- lands, Surface mining, Underground mining.

Parts 877, 879, and 882

Coal mining, Indians -- lands, Reporting requirements, Surface mining, Underground mining.

Parts 884 and 886

Coal mining, Grants programs -- natural resources, Reporting requirements, Surface mining, Underground mining.

Part 888

Coal mining, Indians -- lands, Surface mining, Underground mining.

Effective date: June 30, 1982, The reason for making this rule effective upon date of publication is that OSM wants to avoid delay in reviewing State AMLR program submissions and wants to use the revised grant procedures to expedite review of grant requests submitted by several States.

Accordingly, 30 CFR Parts 870, 872, 874, 875, 877, 879, 882, 884, 886, and 888 are amended as set forth herein.

Dated: April 28, 1982.

J. R. Harris, Director, Office of Surface Mining.

Dated: May 5, 1982.

Daniel N. Miller, Jr., Assistant Secretary for Energy and Minerals.

1. Part 870 is revised to read as follows:

PART 870 -- ABANDONED MINE RECLAMATION FUND -- FEE COLLECTION AND COAL PRODUCTION REPORTING

Section

870.1	Scope.
870.5	Definitions.
870.10	Information collection.
870.11	Applicability.
870.12	Reclamation fee.
870.13	Fee computations.
870.14	Determination of percentage-based fees.
870.15	Reclamation fee payment.
870.16	Production records.
870.17	Compliance authority.

Authority: Sections 201, 402, and 412, Pub. L. 95-87, 91 Stat. 445, 457, and 446 (*30 U.S.C. 1211, 1232, and 1242*).

Source: *42 FR 62713*, Dec. 13, 1977, unless otherwise noted. Redesignated at *43 FR 49940*, Oct. 25, 1978.

SECTION 870.1 - SCOPE.

This part sets out the procedures for the collection of fees for the Abandoned Mine Reclamation Fund.

SECTION 870.5 - DEFINITIONS.

As used in Part 870 through 888 of this subchapter –

ABANDONED MINE RECLAMATION FUND OR FUND means a special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

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

ALLOCATE means the administrative identification in the records of OSM of moneys in the fund for a specific purpose, e.g., identification of moneys for exclusive use by a State.

ANTHRACITE, BITUMINOUS AND SUBBITUMINOUS coal means all coals other than lignite coal.

CALENDAR QUARTER means a 3-month period within a calendar year. The first calendar quarter begins on January 1 of the calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

ELIGIBLE LANDS AND WATER means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law other than the Act.

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

EXPENDED means that moneys have been obligated, encumbered, or committed for reclamation by contract by the OSM, State, or Tribe for work to be accomplished or services to be rendered.

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

FEE COMPLIANCE OFFICER means any person authorized by the Secretary to exercise authority in matters relating to this part.

IN SITU COAL MINING means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining, and fluid recovery mining. At this time, Part 870 considers only in situ gasification.

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.

INDIAN RECLAMATION PROGRAM means a program established by an Indian tribe in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

LEFT OR ABANDONED IN EITHER AN UNRECLAIMED OR INADEQUATELY RECLAIMED CONDITION
means lands and water --

- (a) Which were mined or which were affected by such mining, wastebanks, processing, or other mining processes prior to August 3, 1977, and on which all mining has ceased;
- (b) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and
- (c) For which there is no continuing reclamation responsibility under State or Federal laws.

LIGNITE COAL means consolidated lignite coal having less than 8,300 British thermal units per pound, moist and mineral-matter-free. Moist, mineral-matter free British thermal units per pound are determined by Parr's formula, equation 3, on page 222 of "Standard Specification for Classification of Coals by Rank," in American Society for Testing and Materials ASTM D 388-77 (Philadelphia, 1977). Parr's formula follows:

Moist, Mn-Free Btu=

(Bu-50S)/[100-(1.08A+0.55S)] X 100 where:

Mn=Mineral matter

(Btu=British thermal units per pound (calorific value)

A=percentage of ash, and

S=percentage of sulfur

"Moist" refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

OSM means the Office of Surface Mining Reclamation and Enforcement.

PERMANENT FACILITY means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

PROJECT means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

RECLAIMED COAL means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.

RECLAMATION ACTIVITY means the reclamation, abatement, control, or prevention of adverse effects of past mining.

RECLAMATION PLAN means a plan submitted and approved under Part 884 of this chapter.

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.

STATE RECLAMATION PROGRAM means a program established by a State in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

SURFACE COAL MINING means the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and includes auger coal mining. For purposes of subchapter R, reclaiming coal operations are considered surface coal mining.

TON means 2,000 pounds avoirdupois (0.90718 metric ton).

UNDERGROUND COAL MINING means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

VALUE means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

SECTION 870.10 - INFORMATION COLLECTION.

The information required by Part 870 of this chapter is being collected to meet the mandate of Section 402 of the Act, which requires the Secretary to collect a reclamation fee from coal mining operations. The information collection requirements contained in Sections 870.12(c), 870.15 (b) and (c) and 870.16 (a) and (d) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0063. This information will be used by the regulatory authority to determine whether coal mine operators are reporting accurate production figures and paying proper fees. The obligation to respond is mandatory.

SECTION 870.11 - APPLICABILITY.

The regulations in this Part apply to all surface and underground coal mining operations except --

- (a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;
- (b) The extraction of coal for commercial purposes by surface coal mining operations which affects two acres or less during the life of the mine;
- (c) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the mineral tonnage removed for commercial use or sale in any twelve consecutive months; and

(e) The extraction of less than 250 tons of coal within twelve consecutive months.

SECTION 870.12 - RECLAMATION FEE.

(a) The operator shall pay a reclamation fee on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities, including water, that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator shall not be deducted from the gross weight.

(ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.

(iii) Insufficient records shall subject the operator to fees based on raw tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by surface mining by acceptable engineering calculations or other reports which the Director may require.

SECTION 870.13 - FEE COMPUTATIONS.

(a) Surface mining fees. The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than \$3.50 per ton, in which case the fee is 10 percent of the value.

(b) Underground mining fees. The fee for anthracite, bituminous, and subbituminous coal is 15 cents per ton unless the value of such coal is less than \$1.50 per ton, in which case the fee is 10 percent of the value.

(c) Surface and underground mining fees for lignite coal. The fee for lignite coal is 10 cents per ton unless the value of such coal is less than \$5.00 per ton, in which case the fee charged is 2 percent of the value.

(d) In situ coal mining fees. The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

SECTION 870.14 - DETERMINATION OF PERCENTAGE-BASED FEES.

(a) If the operator submits a fee based on a percentage of the value of coal, the operator shall include, with his fee and production report, documentation supporting the alleged coal value. Based on this information and any additional documentation; including examination of the operator's books and records, that the Director may require, the Director may accept the valuation submitted by the operator, or may otherwise determine the value of the coal.

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under Section 870.15(c).

SECTION 870.15 - RECLAMATION FEE PAYMENT.

- (a) Each operator shall pay the reclamation fee based on calendar quarter tonnage no later than thirty days after the end of each calendar quarter.
- (b) Each operator shall use mine report form OSM-1 (or OSM-1A approved by OSM) to report tonnage of coal sold, used, or ownership transferred during the applicable calendar quarter.
- (c) Delinquent payments are subject to interest at the rate of 1 percent per month, or any part thereof, on any amounts due. Interest shall begin to accrue on the 31st day following the end of the calendar quarter and will run until the date of payment or until judgment is rendered by a court of competent jurisdiction in an action at law to compel payment of debts. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All operators, including those with zero production, who receive Form OSM-1 must submit a completed form together with any fee payment due.
- (d) A check or money order for each coal mine or a check or money order for all of the operator's mines represented by OSM's approved form(s) shall be made payable to Director, Office of Surface Mining, and shall be sent in the same envelope with OSM's approved form(s) to: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, P.O. Box 25065 -- DFC, Denver, Colorado 80225.

SECTION 870.16 - PRODUCTION RECORDS.

- (a) Each operator shall maintain, on a current basis, books and records that contain at least the following information and data --
 - (1) Tons of coal sold or transferred, amount received per ton, name of party to whom sold or transferred, and the date of each sale or transfer.
 - (2) Tons of coal used by the operator and date of consumption.
 - (3) Tons of coal stockpiled or inventoried which are not classified as sold or used for fee computation purposes under Section 870.12 of this Part.
 - (4) For in situ coal mining operations, total Btu value of gas produced, the Btu value of a ton of coal in place certified by an independent laboratory, and the amount received for gas sold, transferred or used.
- (b) The fee compliance officer shall have access to the mine for the purpose of determining compliance with the regulations in this part.
- (c) Each operator shall make any book or record necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by the fee compliance officer. If the fee is paid at the maximum rate, the fee compliance officer shall not copy information relative to price. All information copied shall be protected by OSM in accordance with the Freedom of Information Act [5 U.S.C. 552(b)].
- (d) The operator shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due.

SECTION 870.17 - COMPLIANCE AUTHORITY.

- (a) Fee Compliance Officers shall have the authority to examine records of the second party involved in the sale or transfer of ownership of coal by the operator.
- (b) Fee Compliance Officers shall have the authority to examine the records of any party selling coal to the operator.

2. Part 872 is revised to read as follows:

PART 872 -- ABANDONED MINE RECLAMATION FUNDS

Section

872.1	Scope.
872.10	Information collection.
872.11	Abandoned Mine Reclamation Fund.
872.12	State/Indian Abandoned Mine Reclamation Funds.

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

SECTION 872.1 - SCOPE

This part sets forth general responsibilities for administration of Abandoned Mine Land Reclamation Programs and procedures for management of the Abandoned Mine Reclamation Funds to finance such programs.

SECTION 872.10 - INFORMATION COLLECTION.

The information required by Part 872 is being collected to meet the mandate of Sections 401 and 402 of the Act, which require that the Secretary make a determination regarding the use of allocated State funds which have not been expended in three years. The information collection requirements contained in Section 872.11 (b)(2) and (b)(3) were approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0054. This information will be used by the regulatory authority to determine whether delays by State/Indian tribes in use of allocated and granted funds were due to unavoidable delays in program approval. The obligation to respond is mandatory.

SECTION 872.11 - ABANDONED MINE RECLAMATION FUND.

(a) Revenue to the Fund shall include --

- (1) Reclamation fees collected under section 402 of the Act and Part 870 of this chapter;
- (2) Amounts collected by OSM from charges for use of land acquired or reclaimed with moneys from the Fund under Part 879 of this chapter;
- (3) Moneys recovered by OSM through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under Part 882 of this chapter;
- (4) Moneys recovered by OSM from the sale of lands acquired with moneys from the Fund or by donation; and
- (5) Moneys donated to OSM for the purpose of abandoned mine land reclamation.

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

(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 lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises OSM 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: Provided, however, That amounts allocated to a State and subject to withdrawal because they are not expended in 3 years will not be withdrawn from the State if the State has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(3) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian reclamation plan. If an Indian tribe advises OSM in writing that it does not intend to submit an Indian reclamation plan, no moneys shall be allocated to that tribe. Amounts allocated to Indian tribes that have not been granted to the Indian tribes 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: Provided, however, That amounts allocated to an Indian tribe and subject to withdrawal because they are not expended in 3 years will be reallocated to the tribe if the tribe has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(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 Abandoned Mine program.

(5) All amounts not used for the above purposes shall be available to the Director for the purposes outlined in section 401(c) of the Act.

(c) Money deposited in State or Indian Abandoned Mine Reclamation Funds shall be used to carry out the reclamation plan approved under Part 884 of this chapter and projects approved under Part 888 of this chapter.

SECTION 872.12 - STATE/INDIAN ABANDONED MINE RECLAMATION FUNDS.

(a) Accounts to be known as State or Indian Abandoned Mine Reclamation Funds shall be established in each State or Indian tribal government with approved reclamation plans. These funds will be managed in accordance with the Office of Management and Budget Circular A-102.

(b) Revenue shall include --

(1) Amounts granted by the OSM for purposes of conducting the approved State reclamation plan;

(2) Moneys collected from charges for uses of land acquired or reclaimed with moneys from the State Fund under Part 879 of this chapter;

(3) Moneys recovered through the satisfaction of liens filed against privately owned lands;

(4) Moneys recovered by the State from the sale of lands acquired under Title IV of the Act; and

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

3. Part 874 is revised to read as follows:

PART 874 -- GENERAL RECLAMATION REQUIREMENTS

Section

874.1	Scope.
874.11	Applicability.
874.12	Eligible coal lands and water.
874.13	Reclamation objectives and priorities.

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

SECTION 874.1 - SCOPE.

This part establishes land and water eligibility requirements and reclamation objectives and priorities.

SECTION 874.11 - APPLICABILITY.

The provisions of this part apply to all reclamation projects carried out with money from the Fund and administered by OSM and to the Rural Abandoned Mine Program administered by the Secretary of Agriculture under Section 406 of the Act (*30 U.S.C. 1236*).

SECTION 874.12 - ELIGIBLE COAL LANDS AND WATER.

Coal lands and water are eligible for reclamation activities if --

- (a) They were mined for coal or affected by coal mining processes;
- (b) They were mined prior to August 3, 1977, and left or abandoned in either an unclaimed or inadequately reclaimed condition; and
- (c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under Parts 886 or 888 of this chapter.

SECTION 874.13 - RECLAMATION OBJECTIVES AND PRIORITIES.

Reclamation projects shall reflect the priorities set out in Section 403 of the Act (*30 U.S.C. 1233*) and should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (*45 FR 14810-14819*, March 6, 1980).

4. Part 875 is added to read as follows:

PART 875 -- NONCOAL RECLAMATION

Section

875.1	Scope.
875.11	Applicability.
875.12	Eligible lands and water.
875.13	Requirements for noncoal reclamation.

Authority: Sections 409 and 412, Pub. L. 95-87, 91 Stat. 465 and 466 (*30 U.S.C. 1239* and 1242).

SECTION 875.1 - SCOPE.

This part establishes land and water eligibility requirements and for noncoal reclamation.

SECTION 875.11 - APPLICABILITY.

The provisions of this part apply to all reclamation projects on lands or water mined or affected by mining of minerals and materials other than coal and are to be carried out with money from the Fund and administered by a State or Indian tribe under an approved reclamation program according to Part 884 of this chapter.

SECTION 875.12 - ELIGIBLE LANDS AND WATER.

Noncoal lands and water are eligible for reclamation if --

- (a) They were mined or affected by mining processes;
- (b) They were mined prior to August 3, 1977, and left or abandoned in either an unclaimed or inadequately reclaimed condition;
- (c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or the State as a result of bond forfeiture, which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or, in cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under Parts 886 or 888 of this chapter;
- (d) The reclamation has been requested by the Governor of the State or head of the tribal body;
- (e) The reclamation is necessary for the protection of the public health and safety or all coal related reclamation has been accomplished; and
- (f) Moneys allocated to the State or Indian tribe under Section 872.11(b) (2) and (3) of this chapter are available for the work.

SECTION 875.13 - REQUIREMENTS FOR NONCOAL RECLAMATION.

Reclamation of eligible noncoal mined lands and waters shall comply with the provisions of Section 409 of Pub. L. 95-87 (*30 U.S.C. 1239*).

5. Part 877 is revised to read as follows:

PART 877 -- RIGHTS OF ENTRY

Section	
877.1	Scope.
877.10	Information collection.
877.11	Written consent for entry.
877.13	Entry and consent to reclaim.
877.14	Entry for emergency reclamation.

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

SECTION 877.1 - SCOPE.

This part establishes procedures for entry upon lands or property by OSM, States, and Indian tribes for reclamation purposes.

SECTION 877.10 - INFORMATION COLLECTION.

The information collection requirements contained in Sections 877.11 and 877.13(b) were approved by the Office of Management and Budget (OMB) under *44 U.S.C. 3507* and assigned clearance number 1029-0055. This information is being collected to meet the mandate of Section 407 of the Act, which provides that States or Indian tribes, pursuant to an approved reclamation program, may use the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available.

This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory.

SECTION 877.11 - WRITTEN CONSENT FOR ENTRY.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

SECTION 877.13 - ENTRY AND CONSENT TO RECLAIM.

(a) OSM, the State, or Indian tribe or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this section, the OSM, State, or Indian tribe shall find in writing, with supporting reasons that --

- (1) Land or water resources have been or may be adversely affected by past coal mining practices;
- (2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and
- (3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for OSM, State, or Indian tribe or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) If consent is not obtained, OSM, 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 877.14 - ENTRY FOR EMERGENCY RECLAMATION.

(a) OSM, 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 to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, OSM shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with the requirements set out in Section 410 of the Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. OSM shall make reasonable efforts to notify the 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 in accordance with the requirements set out in Section 877.13(c) of this chapter.

6. Part 879 is revised to read as follows:

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

Section	
879.1	Scope.
879.10	Information collection.
879.11	Land eligible for acquisition.
879.12	Procedures for acquisition.
879.13	Acceptance of gifts of land.
879.14	Management of acquired land.
879.15	Disposition of reclaimed land.

Authority: Sections 201(c), 407 (c), (d), (e), (f), (g), and (h); and 412 (a), Pub. L. 95-87, 91 Stat. 449, 463, 464, and 466 (30 U.S.C. 1211, 1237, and 1247).

SECTION 879.1 - SCOPE.

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by OSM or a State or Indian tribe under an approved reclamation program. It also provides for the management and disposition of lands acquired by the OSM, State, or Indian tribe and establishes requirements for the redeposit of proceeds from the use or sale of land.

SECTION 879.10 - INFORMATION COLLECTION.

The information collection requirements contained in Sections 879.11(b)(1),(b)(2), and (e)(3), 879.12(a), 879.13(b), and 879.15(a) and (b) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0056. This information is being collected to meet the mandate of Section 407 of the Act, which requires that a State/Indian tribe include in its reclamation plan assurances that the acquisition, management, and

disposition of eligible lands and water for reclamation and other designated purposes will be accomplished in a manner prescribed by the Act. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to acquire, manage, and dispose of land in the prescribed manner. The obligation to respond is mandatory.

SECTION 879.11 - LAND ELIGIBLE FOR ACQUISITION.

(a) Land adversely affected by past coal mining practices may be acquired by the OSM with moneys from the Fund, or by a State or Indian tribe if approved in advance by OSM.

OSM 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 will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b)(1) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by OSM or by a State or Indian tribe if approved in advance by OSM. Prior to the approval of the acquisition of such sites, the OSM, State, or Indian tribe 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.

(2) Where an emergency situation exists and a written finding as set out in Section 877.14 of this chapter has been made, OSM may use Fund moneys to acquire lands where public ownership is necessary to meet an emergency situation and prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by OSM if the acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements set out in Section 407(h) of the Act.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entryways or reclaim surface impacts of underground or surface mines may be acquired by the OSM, State, or Indian tribe if OSM finds that acquisition is necessary under Part 875 of this chapter.

(e) The OSM, 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 postreclamation 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 for the reclamation work planned or for the postreclamation use of the land; and

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

SECTION 879.12 - PROCEDURES FOR ACQUISITION.

(a) An appraisal of all land or interest in land to be acquired shall be obtained by the OSM, State, or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land 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 OSM, State, or Indian tribe which acquires land under this part shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, *42 U.S.C. 4601*, et seq., and 41 CFR Part 114-50.

SECTION 879.13 - ACCEPTANCE OF GIFTS OF LAND.

(a) The OSM, State, or Indian tribe under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in Section 879.11.

(b) Offers to make a gift of land or interest in land to the U.S. Government shall be in writing and comply with U.S. Department of the Interior regulations for land donations. The States and Indian tribes may use procedures provided by applicable State or Indian tribal law.

SECTION 879.14 - MANAGEMENT OF ACQUIRED LAND.

Land acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the OSM, State, or Indian tribe shall provide that all user fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

SECTION 879.15 - DISPOSITION OF RECLAIMED LAND.

(a) Prior to the disposition of any land acquired under this part, OSM, State, or Indian tribe shall publish a notice of proposed land disposition, hold public hearings, if required, and make written findings in accordance with the authority contained in Section 407(g)(2) of the Act.

(b) OSM may transfer administrative responsibility for land acquired by OSM to any Federal Department or Agency, with or without cost to that Department or Agency. OSM may transfer title for land acquired by OSM to any State or Indian tribe or to any agency or political subdivision of a State or Indian tribe, with or without cost to that entity, for the purposes set out in paragraphs (e) or (f) of this section. The agreement under which a transfer is made shall specify --

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

(2) That the title of administrative responsibility for the land shall revert to OSM, State, or Indian tribe if, at any time in the future, OSM finds that the land is not used for the purposes specified.

(c) OSM may accept title for abandoned and unreclaimed land to be reclaimed and administered by OSM. If a State or Indian tribe transfers land to OSM under this section, that State or Indian tribe shall have a preference right to purchase such land from OSM 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.

(d) OSM may sell land acquired and reclaimed under this part, except that acquired for housing under Section 879.11(c), to the State or local government at less than fair market value but in no case less than purchase price plus reclamation cost provided such land is used for a valid public purpose.

(e) OSM may transfer or sell land acquired for housing under Section 879.11(c), with or without monetary consideration, to any State or political subdivision of a State, to an Indian tribe, or to any firm, association, or corporation. The conditions of transfer or sale shall be in accordance with Section 407(h) of the Act.

(f) OSM may transfer title for land acquired for housing under Section 879.11(c) by grants or commitments for grants, or may advance money under such terms and conditions as required, to --

- (1) Any State or Indian tribe; or
- (2) A department, agency, or instrumentality of a State; or
- (3) Any public body or nonprofit organization designated by a State.

- (g)(1) OSM may sell or authorize the States or Indian tribes to sell land acquired under this part by public sale if --
- (i) Such land is suitable for industrial, commercial, residential, or recreational development;
 - (ii) Such development is consistent with local, State, or Federal land use plans for the area in which the land is located; and
 - (iii) Retention by OSM, State, or Indian tribe, or disposal under other paragraphs of this section is not in the public interest.
- (2) Disposal procedures will be in accordance with Section 407(g) of the Act and applicable State or Indian tribal requirements.
- (3) States may transfer title or administrative responsibility for land to cities, municipalities, or quasi-governmental bodies, provided that the State provide for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

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

7. Part 882 is revised to read as follows:

PART 882 -- RECLAMATION ON PRIVATE LAND

Section	
882.1	Scope.
882.10	Information collection.
882.12	Appraisals.
882.13	Liens.
882.14	Satisfaction of liens.

Authority: Sections 201(c), 407 (a) and (b), 408, 409, 410, and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, 464, 465, and 466 (*30 U.S.C. 1211, 1237, 1238, 1239, 1240, and 1242*).

SECTION 882.1 - SCOPE.

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

SECTION 882.10 - INFORMATION COLLECTION.

The information collection requirements contained in Sections 882.12(c) and 882.13(b) were approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0057. This information is being collected to meet the mandate of Section 408 of the Act, which allows the State/Indian tribe to file liens on private property that has been reclaimed under certain conditions. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to file liens. The obligation to respond is mandatory.

SECTION 882.12 - APPRAISALS.

(a) A notarized appraisal of private land to be reclaimed which may be subject to a lien under Section 882.13 shall be obtained from an independent appraiser. The appraisal shall state --

- (1) The estimated market value of the property in its unreclaimed condition; and
- (2) The estimated market value of the property as reclaimed.

(b) This appraisal shall be made prior to start of reclamation activities. The agency shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc., to make such appraisals. When

reclamation requires more than 6 months to complete, an updated appraisal under paragraph (a)(2) of this section shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. OSM shall provide appraisal standards for Federal projects, and the State or Indian tribes shall provide appraisal standards for State or Indian tribal projects consistent with generally acceptable appraisal practice.

SECTION 882.13 - LIENS.

(a) OSM, State, or Indian tribe has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value; except that --

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

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by OSM, State, or Indian tribe pursuant to the Congressional intent expressed in Section 408 of the Act and consistent with State or Indian tribal laws governing liens.

(3) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

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

(b) If a lien is to be filed, the OSM, State, or Indian tribe shall, within 6 months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments and placing liens against land. Such statement shall consist of notarized copies of the appraisals obtained under Section 882.12 and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with existing Federal, State or Indian tribal laws: Provided, however, That prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved.

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

SECTION 882.14 - SATISFACTION OF LIENS.

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

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

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate abandoned mine reclamation fund account.

8. Part 884 is revised as follows:

PART 884 -- STATE RECLAMATION PLANS

Section

884.1	Scope.
884.11	State eligibility.
884.13	Content of proposed State reclamation plan.
884.14	State reclamation plan approval.
884.15	State reclamation plan amendment.
884.16	Suspension of plan.
884.17	Impact assistance.

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

SECTION 884.1 - SCOPE.

This part establishes the procedures and requirements for the preparation, submission and approval of State reclamation plans.

SECTION 884.11 - STATE ELIGIBILITY.

A State is eligible to submit a State reclamation plan if it has eligible lands or water as defined in Section 870.5 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 884.13 - CONTENT OF PROPOSED STATE RECLAMATION PLAN.

Each proposed State reclamation plan shall be submitted to the Director in writing and shall include 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 886 of this chapter.
- (b) A legal opinion from the State Attorney General on the chief legal officer of the State agency 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.
- (c) A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program, including --
 - (1) The purposes of the State reclamation program;
 - (2) The specific criteria, consistent with Section 403 of the Act for ranking and identifying projects to be funded;
 - (3) The coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program administered by the Soil Conservation Service, the reclamation programs of any Indian tribes located within the States, and OSM's reclamation programs; and
 - (4) Policies and procedures regarding land acquisition, management and disposal under 30 CFR Part 879;
 - (5) Policies and procedures regarding reclamation on private land under 30 CFR Part 882;
 - (6) Policies and procedures regarding rights of entry under 30 CFR Part 877; and
 - (7) Public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

(d) A description of the administrative and management structure to be used in conducting the reclamation program, including --

(1) The organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity;

(2) The personnel staffing policies which will govern the assignment of personnel to the State reclamation program;

(3) The purchasing and procurement systems to be used by the agency. Such systems shall meet the requirements of Office of Management and Budget Circular A-102, Attachment 0; and

(4) The accounting system to be used by the agency, including specific procedures for the operation of the State Abandoned Mine Reclamation Fund.

(e) A general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation, including --

(1) A map showing the general location or known or suspected eligible lands and waters;

(2) A description of the problems occurring on these lands and waters; and

(3) How the plan proposes to address each of the problems occurring on these lands and waters.

(f) A general description, derived from available data, of the conditions prevailing in the different geographic areas of the State where reclamation is planned, including --

(1) The economic base;

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

(3) Endangered and threatened plant, fish, and wildlife and their habitat.

SECTION 884.14 - STATE RECLAMATION PLAN APPROVAL.

(a) The Director shall act upon a State reclamation plan within 90 days after submittal. A State reclamation plan shall not be approved until the Director has --

(1) Held a public hearing on the plan within the State which submitted it, or made a finding that the State provided adequate notice and opportunity for public comment in the development of the plan;

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

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

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

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

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

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

SECTION 884.15 - STATE RECLAMATION PLAN AMENDMENT.

A State may, at any time, submit to the Director a proposed amendment or revision to its approved plan. If the amendment or revision changes the objectives, scope, or major policies followed by the State in the conduct of its reclamation program, the Director shall follow the procedures set out in Section 884.14 in approving or disapproving an amendment or revision of a State reclamation plan.

SECTION 884.16 - SUSPENSION OF PLAN.

- (a) The Director shall suspend a State reclamation plan, in whole or in part, if he determines that --
 - (1) Approval of the State regulatory program has been withdrawn in whole or in part; or
 - (2) The State is not conducting the State reclamation program in accordance with the plan.
- (b) If the Director determines that the plan should be suspended, the Director shall notify the State by mail, return receipt requested, of the proposed action. The notice of proposed suspension shall state the reasons for the proposed action. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation, including a hearing if requested by the State and performance of remedial action prior to the notice of suspension.
- (c) The Director shall notify the State of his decision in writing. The decision of the Director shall be final.
- (d) The Director shall lift the suspension if he determines that the deficiencies that led to suspension have been corrected.

SECTION 884.17 - IMPACT ASSISTANCE.

- (a) The State reclamation plan may provide for construction of specific public facilities in communities impacted by coal development. This form of assistance is available when 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, 1978, Public Law 94-565 (90 Stat. 2662) are inadequate for such construction.
- (b) Grant applications for impact assistance may be submitted in accordance with Section 886.13 of this chapter.

9. Part 886 is revised to read as follows:

PART 886 -- STATE RECLAMATION GRANTS

Section	
886.1	Scope.
886.3	Authority.
886.10	Information collection.
886.11	Eligibility for grants.
886.12	Coverage and amount of grants.
886.13	Grant period.
886.14	Annual submission of projects.
886.15	Grant application procedures.
886.16	Grant agreements.
886.17	Grant and budget revisions.
886.18	Grant reduction, suspension and termination.
886.19	Audit.
886.20	Administrative procedures.
886.21	Allowable costs.
886.22	Financial management.
886.23	Reports.
886.24	Records.

Authority: Sections 201(c), 401 (a) and (c), 402(g), 405(h), and 412(a), Pub. L. 95-87, 91 Stat. 449, 456, 458, 460, 466 (*30 U.S.C. 1211, 1231, 1232, 1235, and 1242*).

SECTION 886.1 - SCOPE.

This part sets forth procedures for grants to States having an approved State reclamation plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. OSM's "Final Guidelines for Reclamation Programs and Projects" (*45 FR 14810-14819*, March 6, 1980) should be utilized as applicable.

SECTION 886.3 - AUTHORITY.

(a) The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress and specifically allocated to the State under Section 872.11(b)(2).

(b) The Director is authorized to approve additional grants to a State from the moneys available under Section 872.11(b)(5).

SECTION 886.10 - INFORMATION COLLECTION.

The information collection requirements contained in 30 CFR 886.15(c), 886.17(b), 886.18(c), 886.23 (a) and (b), and 886.24 (a) and (b) were approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance numbers 1029-0016, 1029-0017, 1029-0059, 1029-0064, 1029-0068, 1029-0070, 1029-0072 through 1029-0079. This information is being collected to meet the mandate of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) and which are necessary to implement the State/Indian tribe reclamation program. This information will be used by the OSM to ensure that the State/Indian tribe complies with OMB Circular A-102 and sound principles of grants management. The obligation to respond is mandatory.

SECTION 886.11 - ELIGIBILITY FOR GRANTS.

A State is eligible for grants under this part if it has a State reclamation plan approved under Part 884 of this chapter.

SECTION 886.12 - COVERAGE AND AMOUNT OF GRANTS.

(a) An agency may use moneys granted under this part to administer the approved State reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to the OMB Circular A-87.

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

(c) Acquisition of land or interests in land and any mineral or water rights associated with the land shall be approved for up to 90 percent of the costs.

SECTION 886.13 - GRANT PERIOD.

(a) Except as provided in paragraph (b) of this section, the grant funding period for projects shall not exceed 3 years. The grant period for administrative costs of the authorized agency shall not exceed 1 year.

(b) The Director may, in order to facilitate consideration of impact assistance funding, approve a grant period for specific projects beyond 3 years if he finds, on the basis of the information contained in the grant application that --

(1) Projects to be funded will fulfill all the objectives of Section 403 and Section 409 of the Act;

(2) The requests are for funding of specific projects with adequate plans, acceptable deadlines for completion, and the likelihood of specific construction contracts to meet the project deadlines; and

(3) Sufficient funds allocated to the State or Indian tribe under Section 872.11(b)(2) of this chapter are available to complete the projects, including provisions for corrective works on completed projects and any additional eligible projects which may be discovered.

SECTION 886.14 - ANNUAL SUBMISSION OF PROJECTS.

The agency shall cooperate with OSM in the development of the annual submission of projects by providing the information required by Section 405(f) of the Act for use by the Director in the preparation of his requests for appropriation of moneys for the State reclamation grants. The schedule for such estimates shall be determined by the OSM on an annual basis. Funds required to prepare the annual submission of projects under Section 405(f) of the Act may be included in administrative grants under Section 886.12.

SECTION 886.15 – GRANT APPLICATION PROCEDURES.

(a) OSM shall act upon a grant application within 90 days of submittal. If OSM approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(b) If the application is not approved, OSM 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. OSM shall approve or disapprove the resubmitted grant application within 30 days of the resubmittal.

(c) A preapplication is not required if the total of the grant requested is within the amounts allocated to the State under Section 872.11(b)(2) of this chapter. The agency shall use the following application forms and procedures applicable to construction and/or nonconstruction programs specified by OSM in accordance with Office of Management and Budget Circular A-102, Attachment M:

- (1) SF-424 Application for Federal Assistance;
- (2) OSM-50A Section A of the Project Approved Information;
- (3) OSM-50B Section B of the Project Approved Information;
- (4) OSM-51 Program Narrative Statement
- (5) OSM-47 OSM Budget Information Report; and
- (6) OSM-48 Budget Information-Construction Report

(d) The agency shall agree to perform the grant in accordance with the Act, OSM implementing regulations, and applicable OMB and Treasury Circulars.

(e) Complete copies of plans and specifications for projects shall not be required before the grant is approved nor at the start of the project. The Director may review such plans and specifications after the start of the project in the agency office, on the project site, or at any other appropriate site.

(f) 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 the application.

SECTION 886.16 - GRANT AGREEMENTS.

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

- (1) A statement of the work to be covered by the grant;
- (2) A statement of the approvals of specific actions as required under this subchapter or 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 Federal, State or local agencies.

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

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

(d) The 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 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 revision, including grant increases to cover cost overruns.

SECTION 886.17 - GRANT AND BUDGET REVISIONS.

(a) Grant revisions.

(1) A grant revision is a written alteration of the terms or conditions of the grant agreement, whether accomplished on the initiative of the agency or OSM. All procedures for the grant revisions shall conform to OMB Circular A-102.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes which may require a grant revision. The agency shall notify the Director in advance of --

(i) Planned changes in the scope or objective of any individual project even if the change will not result in a change in the total cost of the project; and

(ii) Changes which will result in an extension of the grant period.

(b) Budget revisions.

(1) The agency shall obtain the written approval of the OSM for budget revisions whenever the total amount of the revisions result in an increase or decrease of more than \$5,000 or 5 percent of the grant amount, whichever is greater.

(2) OSM shall either approve or disapprove the budget revision within 15 days of its receipt.

(3) Changes of less than \$5,000 or 5 percent of the grant amount may be made by the agency without advance notification or approval of OSM if the change:

(i) Can be made without exceeding the total amount of the project grant;

(ii) Does not involve a change in the scope or objective of the project involved; and

(iii) Is consistent with the procedures set forth in Office of Management and Budget Circular A-102,

attachment K.

SECTION 886.18 - GRANT REDUCTION, SUSPENSION, AND TERMINATION.

(a) Conditions for reduction, suspension or termination.

(1) If an agency violates the terms of a grant agreement or an approved reclamation plan, OSM may reduce, suspend or terminate the grant.

(2) If an agency fails to expend moneys allocated and granted within three years from the date of allocation, or an extension granted under Section 866.13, OSM may reduce the grant in accordance with Section 872.11(b)(2) of this subchapter.

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

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

(i) Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252 (*42 U.S.C. 2000d-1*).

"Nondiscrimination in Federally Assisted Programs", which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, "Equal Employment Opportunity," requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355 (*29 U.S.C. 794*), as amended by Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs."

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

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

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

(1) OSM shall give at least 30 days written notice to the agency by mail, return receipt requested, of intent to reduce, suspend, or terminate a grant. OSM shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

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

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

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, any portion of the grant that is required to meet contractual commitments made prior to the effective date of termination shall be retained by the agency.

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

(6) OSM may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A-87.

(c) Appeals.

(1) Within 30 days of OSM's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

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

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

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

(3) The Secretary shall act upon the appeal within 30 days of receipt.

SECTION 886.19 - AUDIT.

The agency shall arrange for an 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 accordance with the audit guides provided by the General Accounting Office and by the "Approved Compliance Supplement" issued by the Office of Management and Budget.

SECTION 886.20 - ADMINISTRATIVE PROCEDURES.

The agency shall follow administrative procedures governing accounting, payment, property, and related requirements contained in Office of Management and Budget Circular No. A-102 and use the following forms: OSM-60 (Report of Government Property), OSM-62 (Recipients' Release), and OSM-63 (Recipients Assignments of Refunds, Rebates and Credits)

SECTION 886.21 - ALLOWABLE COSTS.

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

(b) Costs must conform with any limitations, conditions, or exclusions set forth in the grant agreement.

SECTION 886.22 - FINANCIAL MANAGEMENT.

(a) The agency shall account for grant funds in accordance with the requirement of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices consistently applied. Accounting for grant funds must be accurate and current.

(b) The Agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

SECTION 886.23 - REPORTS.

(a) For each grant/cooperative agreement, the agency shall semiannually submit to OSM the following reports prepared according to the Office of Management and Budget Circular No. A-102, Attachments H and I:

(1) Financial Status Report, Form SF-269, for the agency's administrative grant/cooperative agreement and the Performance Report, Form OSM-51, covering the performance aspects of the grant/cooperative agreement.

(2) Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271, and the Performance Report, Form OSM-51, for each activity or project on which some work has occurred.

(b) For each grant/cooperative agreement, the agency shall annually submit to the Office the following reports prepared according to Office of Management and Budget Circular A-102, Attachments H and I:

(1) A final Financial Status Report, Form SF-269, for the Agency's administrative grant/cooperative agreement and a final Performance Report, Form OSM-51, covering the performance aspects of the grant/cooperative agreement.

(2) An annual Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271, and a cumulative annual Performance Report, Form OSM-51, which includes --

(i) For each project or activity, a brief description and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed or being reclaimed, and a summary of achieved or expected benefits;

(ii) For any land previously acquired by not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land; and

(iii) 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.

SECTION 886.24 - RECORDS.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular A-102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly --

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

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

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

10. Part 888 is revised to read as follows:

PART 888 -- INDIAN RECLAMATION PROGRAMS

Section

888.1	Scope.
888.2	Objectives.
888.11	Interim procedures.

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

SECTION 888.1 - SCOPE.

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

SECTION 888.2 - OBJECTIVES.

- (a) The objectives of this part are to provide a temporary vehicle for mitigation of emergency situations or extreme danger situations arising from past mining practices and to begin reclamation of other areas determined to have high priority on Indian lands.
- (b) Upon completion or required legislation, this part will be either deleted and supplanted by the other parts of this chapter dealing with State and Indian reclamation programs or expanded as required to achieve the purposes of the Act.

SECTION 888.11 - INTERIM PROCEDURES.

- (a) The Director is authorized to receive proposals from Indian tribes for projects which should be carried out on Indian lands and to carry out such projects pursuant to Parts 872 through 882 of this chapter.
- (b) The Director shall consult with the Indian tribe and the Bureau of Indian Affairs' office having jurisdiction over the Indian lands on all reclamation activities carried out on Indian lands under this subchapter.
- (c) If a proposal is made by an Indian tribe and approved by the Director, the tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to OSM under Section 872.11(b)(5).
- (d) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

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