

**FEDERAL REGISTER: 51 FR 9441 (March 19, 1986)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 884 and 886

Abandoned Mine Land Reclamation Programs; State Reclamation Plan Amendments

ACTION: Final rule.

**SUMMARY:** The Office of Surface Mining (OSM) Reclamation and Enforcement is promulgating revisions to the requirements in 30 CFR 884.15 concerning amendments or revisions to State Abandoned Mine Land Reclamation (AMLR) Plans. Under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, States having approved abandoned mine land reclamation plans are eligible to receive grants from OSM to reclaim lands and water damaged by mining prior to August 3, 1977. Current regulations do not specifically address whether a State must amend its AMLR plan in response to regulatory changes adopted by OSM. To correct this situation, OSM is promulgating rules specifying that either OSM or a State can initiate procedures for amending State AMLR plans. This will ensure that State AMLR plans can be adjusted to meet changes in the Act or regulations.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Abandoned Mined Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Room 5401-L, Washington, D.C. 20240, Telephone (202) 343-7960.

**SUPPLEMENTARY INFORMATION:**

Title IV of the SMCRA establishes an abandoned mine land program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Department a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Department may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of the SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 47 FR 28600-28601, June 30, 1982). Under these regulations, the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM established Subchapter T of 30 CFR Chapter VII. Subchapter T consists of parts 900 through 953.

Procedures for amending State reclamation plans are found at 30 CFR 884.15. They specify that a State may submit at any time a proposed amendment to the Director. If the proposed revision or amendment changes the objectives, scope or

major policies followed by the State in the conduct of its reclamation program, the Director is to follow the procedures in 30 CFR 884.14 in approving or disapproving the submission. Those regulations, however, until now did not address whether the Director, on his own initiative, can require States to amend their State reclamation plans in response to regulatory, statutory, or other changes. This rulemaking adds this authority for the Director in order to ensure that all State AMLR Plans reflect current regulatory and statutory provisions.

## **DISPOSITION OF COMMENTS**

Proposed rules were published on January 4, 1985 (*50 FR 483*), and the public comment period was reopened on February 19, 1985. Numerous comments were received and are discussed below.

## **GENERAL COMMENTS**

One commenter stated that OSM rule changes should not be grounds for requiring States to amend their State reclamation plans because "rules are in too much of a state of flux", and States should not have to be put in the position of constantly amending reclamation plans to the detriment of other activities. For this commenter, the only instances in which a State should be made to amend its reclamation plan are if amendments are made to the enabling legislation or if a State is "clearly not following" the procedures set forth in its plan. In addition, this commenter notes that the Director of OSM has not needed to require States to change their plans in the first eight of the Program's fifteen year life and, at this time, there is no compelling reason or specific need for the Director to be able to require States to amend their plans. OSM's response is that the reclamation plans were approved because they were found to be compatible with the regulations implementing Title IV of the Surface Mining Control and Reclamation Act. If these implementing regulations should change, then the State reclamation plans should also be amended to incorporate revisions to the regulations. Otherwise, the basis for approval of the State plans could be questioned. The purpose of this rulemaking is to avoid this situation by ensuring that the State reclamation plans will be no less effective than the implementing regulations. OSM does not intend to put the States in the position of "constantly amending reclamation plans to the detriment of other activities" as the commenter fears. As the commenter notes, few rule changes have occurred during the first eight years of the abandoned mine land program and few are expected in the future.

Two commenters indicated that the proposed expansion of the OSM Director's authority to require plan revisions is appropriate. One of these commenters further noted that any regulatory revision which requires State programs to "mirror Federal regulations, insofar as the State programs must be equally as stringent, if not more stringent than Federal regulations require, is in accordance with the goals established by the SMCRA and is in the best interests of the environmentally concerned public." OSM's response is that the purpose of this rulemaking is not to require the State reclamation plans "to mirror" Federal regulations as the commenter appears to assume, but rather to ensure that State regulations are no less effective than the Federal.

One commenter indicated that OSM already has regulatory authority to suspend a State's plan if that State is not conducting its abandoned mine land reclamation program in accordance with its approved plan. This commenter concludes that, for the above reason, this "additional regulatory authority to force States to amend approved plans is unnecessary." While OSM agrees with the commenter that it has the authority to suspend a State plan if a State is not conducting its program in accordance with its approved plan, it believes that this rulemaking is necessary because it provides for less drastic actions than suspension of a State's plan. These less drastic actions are discussed below in responses to Section 884.15(f).

## **SECTION 884.15(a)**

Section 884.15(a) provides that a State may submit to the Director of OSM a proposed amendment to the State reclamation plan at any time. If the proposed amendment changes the objectives, scope or major policies followed by the State in the conduct of or reclamation program, Section 884.15(a) requires the Director to follow the procedures in existing Section 884.14 in approving or disapproving the proposed amendment. One commenter indicated concern over the language in this subsection in that it does not provide examples of procedural changes which are considered to be "minor changes" by OSM.

OSM's response is that given the complexity of the State plans it is not advisable to attempt to define what constitutes a "major" or a "minor" change in a State plan. OSM will continue to follow a rule of reasonableness in determining which

revision to a State plan requires an amendment because it "changes the objectives, scope or major policies followed by the State in the conduct of the reclamation program."

#### SECTION 884.15(b)

Proposed Section 884.15(b) would have required the Director to promptly notify the States of all changes in the SMCRA, the Secretary's regulations or other circumstances which will require an amendment to the State reclamation plan. Three commenters requested that the word "will" be changed to "may" in the final rule. The purpose of this change would be to give a State the opportunity to present possible arguments that in some instances a plan amendment might not be necessary. OSM agrees and has changed the regulations to read "which may require an amendment to the State reclamation plan."

One commenter requested deletion of the words "or other circumstances" in the proposed rule. For this commenter, section 405 of SMCRA "seems to limit the (Director's) authority to request changes (in State Plans) to rule changes". OSM has declined to delete the words requested by the commenter because it interprets section 405 of SMCRA as not limiting the Director's authority to request changes in State Plans to only those changes required by amendment of the Statute or regulations.

#### SECTION 884.15(c)

Section 884.15(c) provides that States shall promptly notify OSM of any conditions or events that prevent or impede administration of their State reclamation program in accordance with their approved reclamation plans. One commenter contends that this subsection is unnecessary because "conditions or events that prevent or impede a State from administering its program in accordance with its approved reclamation plan will be identified through normal coordination between the State and OSM through the oversight process." OSM's response is that merely because the oversight process identifies conditions or events that prevent or impede a State from administering its program in accordance with its approved reclamation plan, it does not follow that these conditions or events will be addressed or resolved and that the proposed rule is therefore unnecessary. The purpose of the proposed rule is to provide a mechanism to require changes in State plans when the oversight process reveals, but does not resolve, conditions or events that prevent or impede a State from administering its State reclamation program in accordance with its approved reclamation plan.

#### SECTION 884.15(d)

Section 884.15(d) provides that State reclamation plan amendments may be required by the Director when there are changes in the Act or regulations that result in approved State reclamation plans no longer meeting the requirements of the Act or the regulations or whenever a State is not conducting its State reclamation program in accordance with its approved State reclamation plan. Four commenters opposed proposed sections (d)(2) and (3) because they refer to unnamed conditions and unspecified events that are too vague. For these commenters the only conditions or events which should initiate a required plan amendment would be if a plan no longer meets the requirements of the Act and regulations. While OSM disagrees that the Director's authority to require a State plan amendment is limited to changes in the statute or regulations, it has decided to delete sections (d)(2) and (3) since they are not necessary. OSM believes that proposed section (d)(4) (now renumbered as (d)(2)) provides the Director with sufficient authority to require State plan amendments because it allows the Director to require State Plan amendments whenever a State "is not conducting its reclamation program in accordance with the approved State reclamation plan".

#### SECTION 884.15(e)

Section 884.15(e) provides that if the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative and legislative procedures in the State for submitting an amendment to the reclamation plan. No comments were received on this subsection.

## SECTION 884.15(f)

Proposed Section 884.15(f) provides that failure of a State to submit an amendment within the timetable established or to make reasonable or diligent efforts to submit an amendment may result in either suspension of the reclamation plan, reduction suspension or termination of existing AML grants or withdrawal from consideration for approval of grant applications.

Four commenters requested deletion of the second part of proposed section (f). These commenters said that if a State does not have a reclamation plan which meets the requirements of the Act and regulations promulgated pursuant thereto and has not submitted an amendment in accordance with the established timetable, plan suspension would be initiated as provided by Section 884.16.

Reduction, suspension, or termination of existing AMLR grants under Section 886.18 would be the next step following suspension of the plan. These commenters said that reduction, suspension, or termination of existing AMLR grants should follow suspension of the plan and not precede it. Likewise, they said that "withdrawal from consideration for approval of all grant applications submitted under Section 886.15" should follow, not precede, plan suspension.

OSM has decided to retain the regulation as proposed because it offers increased flexibility for the Director of OSM. The commenters are correct in noting that, under the existing regulations, grants cannot be reduced, suspended or terminated until after a State plan has been suspended. The result is that, under the existing regulations, the Director of OSM has only two options -- suspension or termination. Such actions by the Director would force a State reclamation program to begin to close down. Moreover, if the situation which caused the plan to be terminated is remedied, the plan would have to go through a formal re-approval process. The result would be cumbersome and costly. These regulations, by giving the Director of OSM more flexibility, allow less drastic actions to be considered that could accomplish the purpose of ensuring that States are conducting their reclamation programs in accordance with their reclamation plans.

## SECTION 886.18(a)(7)

Section 886.18(a)(7) provides that if an agency fails to submit a reclamation plan amendment, OSM may reduce, suspend, or terminate in whole or in part all existing AML grants or may refuse to process all future grant applications. Three commenters oppose the proposed regulation for the same reasons given to support their position on proposed Section 884.15(b). OSM disagrees; see the discussion on Section 884.15(b) above and OSM's response thereto.

One commenter requests that the proposed rule be amended to require that reduction, suspension or termination of grants should be done in accordance with the conditions and procedures stated in Section 886.18(b). Section 886.18(b) provides for written notice of intent to reduce, suspend or terminate a grant, opportunity for consultation and remedial action prior to reducing or terminating, and other procedural safeguards for a State agency against which an action to reduce, suspend, or terminate a grant is taken. OSM does not believe that granting the commenter's request is necessary since if any action is taken to reduce, suspend, or terminate a grant because of application of any part of Section 884.15, OSM must follow the procedures set forth in Section 886.18(b).

## PROCEDURAL MATTERS

### Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*).

The revisions to Sections 884.15, 884.16, 886.18 of the abandoned mine regulations would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under *44 U.S.C. 3501* et seq.

#### National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on this rule that reached the conclusion that this rule should not significantly affect the quality of the human environment. The EA is on file in the OSM Administrative Record Room 5315, 1100 "L" Street, NW., Washington, D.C.

#### **LIST OF SUBJECTS IN 30 CFR PARTS 884 AND 886**

Grants Programs-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

For the foregoing reasons, OSM amends 30 CFR Parts 884 and 886 as follows:

Dated: January 31, 1986.

James E. Cason, Assistant Secretary, Land and Minerals Management.

#### **PART 884 -- STATE RECLAMATION PLANS**

1. The authority citation for Part 884 is revised to read as follows:

Authority: Pub. L. 95-87; *30 U.S.C. 1201* et seq.

30 CFR 884.15 is revised as follows:

#### **SECTION 884.15 - STATE RECLAMATION PLAN AMENDMENTS.**

(a) A State may, at any time, submit to the Director a proposed amendment or revision to its approved reclamation 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.

(b) The Director shall promptly notify the State of all changes in the Act, the Secretary's regulations or other circumstances which may require an amendment to the State reclamation plan.

(c) The State shall promptly notify OSM of any conditions or events that prevent or impede it from administering its State reclamation program in accordance with its approved State reclamation plan.

(d) State reclamation plan amendments may be required by the Director when --

(1) Changes in the Act or regulations of this chapter result in the approved State reclamation plan no longer meeting the requirements of the Act or this chapter; or

(2) The State is not conducting its State reclamation program in accordance with the approved State reclamation plan.

(e) If the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative or legislative procedures in the State for submitting an amendment to the reclamation plan.

(f) Failure of a State to submit an amendment within the timetable established under paragraph (e) of this section or to make reasonable or diligent efforts in that regard may result in either the suspension of the reclamation plan under Section 884.16, reduction, suspension or termination of existing AML grants under Section 886.18, or the withdrawal from consideration for approval of all grant applications submitted under Section 886.15.

**SECTION 884.16 [Amended]**

3. 30 CFR 884.16 is amended by revising paragraph (a) as follows:

**SECTION 884.16 - SUSPENSION OF PLAN.**

- (a) The Director may 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;
  - (2) The State is not conducting the State reclamation program in accordance with its approved State reclamation plan; or
  - (3) The state has not submitted a reclamation plan amendment within the time specified under Section 884.15.

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**PART 886 -- STATE RECLAMATION GRANTS**

4. The authority citation for part 886 is revised to read as follows:

Authority: Pub. L. 95-87; *30 U.S.C. 1201* et seq.

5. 30 CFR 886.18 is amended by adding paragraph (a)(7) as follows:

**SECTION 886.18 - GRANT REDUCTION, SUSPENSION, AND TERMINATION.**

(a) \* \* \*

(7) If an agency fails to submit a reclamation plan amendment as required by Section 884.15, OSM may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

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