

## § 876.12

including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029-0104), Washington, DC 20503.

### § 876.12 Eligibility.

(a) Any State or Indian tribe having an approved abandoned mine land program may receive and retain, without regard to the three-year limitation set forth in Section 402(g)(1)(D) of the Act, up to 10 percent of the total of the grants made under Section 402(g) (1) and (5) of the Act to such State or Indian tribe for the purpose of abandoned mine land reclamation if such amounts are deposited into either:

(1) A special fund established under State or Indian tribal law pursuant to which such amounts (together with all interest earned) are expended by the State or Indian tribe solely to achieve the priorities stated in Section 403(a) after September 30, 1995; or

(2) An acid mine drainage abatement and treatment fund established under State or Indian tribal law.

(b) Any State or Indian tribe may establish under State or Indian tribal law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State or Indian tribe to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Director.

### § 876.13 Plan content.

Acid Mine Drainage Abatement Plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

(a) An identification of the qualified hydrologic unit;

(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit;

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(c) An identification of the sources of acid mine drainage within the hydrologic unit;

(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit;

(e) The cost of undertaking the proposed abatement and treatment measures;

(f) An identification of existing and proposed sources of funding for such measures; and

(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

### § 876.14 Plan approval.

The Director may approve any plan under § 876.13(b) only after determining that such plan meets the requirements of § 876.13. In conducting an analysis of the items referred to in § 876.13(d), (e) and (g), the Director shall obtain the comments of the Director of the U.S. Bureau of Mines. In approving plans under this section, the Director shall give priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under the Rural Abandoned Mine Program.

## PART 877—RIGHTS OF ENTRY

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AUTHORITY: Secs. 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).

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

### § 877.1 Scope.

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

### § 877.10 Information collection.

The information collection requirements contained in §§ 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.

**§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.

**§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.

**§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 §877.13(c) of this chapter.