

Surface Mining Reclamation and Enforcement, Interior

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§ 880.16 Civil rights.

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

[48 FR 37378, Aug. 18, 1983. Redesignated at 59 FR 52378, Oct. 17, 1994]

PART 881—SUBSIDENCE AND STRIP MINE REHABILITATION, APPALACHIA

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

SOURCE: 48 FR 37379, Aug. 18, 1983, unless otherwise noted.

§ 881.1 Purpose and scope.

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

§ 881.2 Definitions.

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

(a) *Government* means the United States of America;

(b) *Commission* means the Appalachian Regional Development Commission established by Section 101 of the Appalachian Regional Development Act of 1965;

(c) *State* means any one of the States listed in section 403 of the Appalachian Regional Development Act of 1965; and

(d) *Local authorities* or *local bodies of government* means a county, city, township, town, or borough, and other local governmental bodies organized and existing under authority or State laws.

§ 881.3 Qualification of projects.

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

(b) Projects must be submitted by a State to the Commission and receive the approval of that body.

§ 881.4 Application of contribution.

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

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

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

(2) Accurate information, data, and maps of the location of the project, the area involved, and, if the project consists of work designed to prevent or alleviate subsidence, information, data,

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and maps (if available) of the seams of coal to be filled or flushed;

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

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

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

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

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

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

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

§ 881.5 Cooperative agreements.

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

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

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

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

§ 881.6 Project contract.

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

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

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

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

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

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

(1) Regardless of any agreement between the State and the Government

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

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

(3) All laborers and mechanics employed by the contractor or subcontractors on the project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary of Labor shall have with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 FR 3176, 64 Stat. 1267, 5 U.S.C. 133-133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

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

(i) Every contractor or subcontractor undertaking to do work on the project which is or reasonably may be done as onsite work, in carrying out such contract work shall give preference to

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qualified persons who regularly reside in the labor area as designated by the U.S. Department of Labor wherein such project is situated, or the subregion, or the Appalachian counties of the State wherein such project is situated, except:

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

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

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

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

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

§ 881.7 Administration of contributions.

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

(b) The State shall submit to the Director, not more often than once a month and for each cooperative agreement, a separate voucher which describes each payment made or that is due and payable by the State under a project contract. The amounts claimed under each voucher shall be certified

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by the State as proper charges under the project contract, and the State shall also certify that the amounts have either been paid or are due and payable thereunder. Insofar as the Government's contribution payments related to amounts due and payable rather than amounts already paid, the State shall disburse such funds together with the funds contributed by the State, promptly upon receipt from the Government.

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

§ 881.8 Withholding of payments.

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

§ 881.9 Reports.

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

§ 881.10 Obligations of States or local authorities.

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

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

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

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

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

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

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

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

(e) The State or local authorities, shall agree not to mine or permit the mining of coal or other minerals in the land or property owned or controlled by the State or local authorities, if re-

quired by OSM to assure the success or protection of the project work for such period of time as may be required by OSM.

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

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

§ 881.11 Nondiscrimination.

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

§ 881.12 Civil rights.

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

Act of 1964" (43 CFR part 17) and shall give assurances of compliance in such forms as may be required by the Director.

PART 882—RECLAMATION ON PRIVATE LAND

Sec.

882.1 Scope.

882.10 Information collection.

882.12 Appraisals.

882.13 Liens.

882.14 Satisfaction of liens.

AUTHORITY: Secs. 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).

SOURCE: 47 FR 28599, June 30, 1982, unless otherwise noted.

§ 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.

§ 882.10 Information collection.

The information collection requirements contained in §§ 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.

§ 882.12 Appraisals.

(a) A notarized appraisal of private land to be reclaimed which may be subject to a lien under § 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.

§ 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