

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.

**PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER**

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## § 879.1

AUTHORITY: Secs. 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).

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

### § 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.

### § 879.10 Information collection.

The information collection requirements contained in §§ 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.

### § 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 pre-

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vention 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 § 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

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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.

### § 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.

### § 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 § 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.

### § 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.

### § 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 § 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 §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 §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.

## PART 880—MINE FIRE CONTROL

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AUTHORITY: 30 U.S.C. 551-558, 40 U.S.C. App. 205, and Pub. L. 102-486.

SOURCE: 48 FR 37378, Aug. 18, 1983, unless otherwise noted.

### § 880.1 Scope.

Projects for the control or extinguishment of outcrop or underground fires in coal formations under the authority of the Act of August 31, 1954 (30 U.S.C. 551-558); section 205(a)(2) of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5), and the Energy Policy Act of 1992 (Pub. L. 102-486).

[59 FR 52377, Oct. 17, 1994]

### § 880.5 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) *Local authorities* means the State or local governmental bodies organized and existing under the authority of State laws, including, but not limited to, a county, city, township, town, or borough;

(d) *Approved abandoned mine reclamation program* means a program meeting the requirements defined in Section 405 of PL 95-87, as amended;

(e) *Operating coal mine* means a coal mine for which the regulatory authority has not terminated its jurisdiction as set out under 30 CFR 700.11(d)(1);

(f) *Inactive coal mine* means a coal mine for which the regulatory authority has terminated its jurisdiction as set out under 30 CFR 700.11(d)(1);

(g) *Project* means a project whose purpose is to control or extinguish fires in coal formations.

[48 FR 37378, Aug. 18, 1983. Redesignated and amended at 59 FR 52377, Oct. 17, 1994]