AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

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

Sec.
870.1 Scope.
870.5 Definitions.
870.10 Information collection.
870.11 Applicability.
870.12 Reclamation fee.
870.13 Fee rates.
870.14 Determination of percentage-based fees.
870.15 Reclamation fee payment.
870.16 Acceptable payment methods.
870.17 Filing the OSM–1 Form.
870.18 General rules for calculating excess moisture.
870.19 How to calculate excess moisture in HIGH-rank coals.
870.20 How to calculate excess moisture in LOW-rank coals.
870.21 Late payments.
870.22 Maintaining required production records.
870.23 Consequences of noncompliance.

AUTHORITY: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105–277.

SOURCE: 47 FR 28593, June 30, 1982, unless otherwise noted.

§ 870.1 Scope.

This part sets out our procedures to collect fees for the Fund and to report coal production.

[73 FR 67631, Nov. 14, 2008]

§ 870.5 Definitions.

As used in this Part—

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.

Excess moisture means the difference between total moisture and inherent moisture, calculated according to §870.19 for high-rank coals or the difference between total moisture and inherent moisture calculated according to §870.20 for low-rank coals.

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.

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.

Inherent moisture means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but excluding that present in macroscopically visible fractures, as determined according to §870.19(a) or §870.20(a).

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:

$$\text{Moist, Mn-Free Btu} = (\text{Bu} - 50\text{S})/[100 - (1.08\text{A} + 0.55\text{S})] \times 100$$

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.

Mineral owner means any person or entity owning 10 percent or more of the mineral estate for a permit. If no single mineral owner meets the 10 percent rule, then the largest single mineral owner shall be considered to be the mineral owner. If there are several persons who have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

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.

Surface coal mining means the extraction of coal from the earth by removing the materals 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).

Total moisture means the measure of weight loss in an air atmosphere under rigidly controlled conditions of temperature, time and air flow, as determined according to either §870.19(a) or §870.20(a).

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.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28168, May 31, 1994; 60 FR 9980, Feb. 22, 1995; 62 FR 60142, Nov. 6, 1997; 73 FR 67631, Nov. 14, 2008]

§ 870.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 870 and the OSM–1 Form and assigned control number 1029–0063. The information is used to maintain a record of coal produced nationwide each calendar quarter, the method of coal removal, the type of coal, and the basis for coal tonnage reporting. Persons must respond to meet the requirements of SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67631, Nov. 14, 2008]

§ 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 as an incidental part of Federal, State, or local government-financed highway or other construction;

(c) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for commercial use or sale

(1) In accordance with part 702 of this chapter for Federal program States and on Indian lands or

(2) In any twelve consecutive months in a State with an approved State program until counterpart regulations pursuant to part 702 of this chapter have been incorporated into the State program and in accordance with such counterpart regulations, thereafter; and

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

[47 FR 28593, June 30, 1982, as amended at 54 FR 52123, Dec. 20, 1989; 54 FR 52123, Dec. 20, 1989; 73 FR 67631, Nov. 14, 2008]

§ 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 that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator, excluding excess moisture for which a reduction has been taken pursuant to § 870.18, 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.

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28169, May 31, 1994; 69 FR 56130, Sept. 17, 2004]

§ 870.13 Fee rates.

(a) *Fees for coal produced for sale, transfer, or use through September 30, 2007*—(1) *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.

(2) *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.

(3) *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.

(4) *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.

(b) *Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012.* Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed.	(i) If value of coal is $3.15 per ton or more, fee is 31.5 cents per ton. (ii) If value of coal is less than $3.15 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is $1.35 per ton or more, fee is 13.5 cents per ton. (ii) If value of coal is less than $1.35 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is $4.50 per ton or more, fee is 9 cents per ton. (ii) If value of coal is less than $4.50 per ton, fee is 2 percent of the value.

Type of fee	Type of coal	Amount of fee
(4) In situ coal mining fee	All types other than lignite	13.5 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.
(5) In situ coal mining fee	Lignite	9 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.

(c) *Fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021.* The fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed coal.	(i) If value of coal is $2.80 per ton or more, fee is 28 cents per ton. (ii) If value of coal is less than $2.80 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is $1.20 per ton or more, fee is 12 cents per ton. (ii) If value of coal is less than $1.20 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is $4.00 per ton or more, fee is 8 cents per ton. (ii) If value of coal is less than $4.00 per ton, fee is 2 percent of the value.
(4) In situ coal mining fee	All types other than lignite	12 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.
(5) In situ coal mining fee	Lignite	8 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.

[47 FR 28593, June 30, 1982, as amended at 69 FR 56130, Sept. 17, 2004; 73 FR 67631, Nov. 14, 2008]

§ 870.14 Determination of percentage-based fees.

(a) If you pay a fee based on a percentage of the value of coal, you must include documentation supporting the claimed coal value with your fee payment and production report. We may review this information and any additional documentation we may require, including examination of your books and records. We may accept the valuation you claim, or we may determine another value of the coal.

(b) If we determine that a higher fee must be paid, you must pay the additional fee together with interest computed under § 870.21.

[73 FR 67632, Nov. 14, 2008]

§ 870.15 Reclamation fee payment.

(a) You must pay the reclamation fee based on calendar quarter tonnage no later than 30 days after the end of each calendar quarter.

(b) Along with any fee payment due, you must submit to us a completed Coal Sales and Reclamation Fee Report (OSM–1 Form). You can file the OSM–1 Form either in paper format or in electronic format as specified in § 870.17. On the OSM–1 Form, you must report:

(1) The tonnage of coal sold, used, or transferred;

(2) The name and address of any person or entity who is the owner of 10 percent or more of the mineral estate for a given permit; and

(3) The name and address of any person or entity who purchases 10 percent or more of the production from a given permit, during the applicable quarter.

(c) If no single mineral owner or purchaser meets the 10 percent criterion in paragraphs (b)(2) and (b)(3) of this section, then you must report the name and address of the largest single mineral owner and purchaser. If several persons have successively transferred

the mineral rights, you must include on the OSM–1 Form information on the last owner(s) in the chain before the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

(d) At the time of reporting, you may designate the information required by paragraphs (b) and (c) of this section as confidential.

[73 FR 67632, Nov. 14, 2008]

§ 870.16 Acceptable payment methods.

(a) If you owe total quarterly reclamation fees of $25,000 or more for one or more mines, you must:

(1) Use an electronic fund transfer mechanism approved by the U.S. Department of the Treasury;

(2) Forward payments by electronic transfer;

(3) Include the applicable Master Entity No.(s) (Part 1–Block 4 on the OSM–1 Form), and OSM Document No.(s) (Part 1–upper right corner of the OSM–1 Form) on the wire message; and

(4) Use our approved form or approved electronic form to report coal tonnage sold, used, or for which ownership was transferred to the address indicated in the Instructions for Completing the OSM–1 Form.

(b) If you owe less than $25,000 in quarterly reclamation fees for one or more mines, you may:

(1) Forward payments by electronic transfer in accordance with the procedures specified in paragraph (a) of this section; or

(2) Submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement in the same envelope with the OSM–1 Form to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 360095M, Pittsburgh, Pennsylvania 15251.

(c) If you pay more than $25,000 by a method other than an electronic fund transfer mechanism approved by the U.S. Department of the Treasury, you will be in violation of the Surface Mining Control and Reclamation Act of 1977, as amended.

[73 FR 67632, Nov. 14, 2008]

§ 870.17 Filing the OSM–1 Form.

(a) *Filing an OSM–1 Form electronically*. You may submit a quarterly electronic OSM–1 Form in place of a quarterly paper OSM–1 Form. Submitting the OSM–1 Form electronically is optional. If you submit your form electronically, you must use a methodology and medium approved by us and do one of the following:

(1) Maintain a properly notarized paper copy of the identical OSM–1 Form for review and approval by our Fee Compliance auditors (in order to comply with the notary requirement in SMCRA); or

(2) Submit an electronically signed and dated statement made under penalty of perjury that the information contained in the OSM–1 Form is true and correct.

(b) *Filing a paper OSM–1 Form*. Alternatively, you may submit a quarterly paper OSM–1 Form. If you choose to submit your form on paper, you must do one of the following:

(1) Submit a properly notarized copy of the OSM–1 Form; or

(2) Submit the OSM–1 Form with a signed and dated statement made under penalty of perjury that the information contained in the form is true and correct. Under the unsworn statement option, you must sign the following statement: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

[73 FR 67632, Nov. 14, 2008]

§ 870.18 General rules for calculating excess moisture.

If you are an operator who mined coal after June 1988, you may deduct the weight of excess moisture in the coal to determine reclamation fees you owe under 30 CFR 870.12(b)(3)(i). Excess moisture is the difference between total moisture and inherent moisture. To calculate excess moisture in HIGH-rank coal, follow § 870.19. To calculate excess moisture in LOW-rank coal, follow § 870.20. Report your calculations on the OSM–1 form, Coal Reclamation Fee Report, for every calendar quarter in which you claim a deduction. Some cautions:

(a) You or your customer may do any test required by §§ 870.19 and 870.20. But

whoever does a test, you are to keep test results and all related records for at least six years after the test date.

(b) If OSM disallows any or all of an allowance for excess moisture, you must submit an additional fee plus interest computed according to § 870.21(a) and penalties computed according to § 870.21(c).

(c) The following definitions are applicable to §§ 870.19 and 870.20. ASTM standards D4596–93, *Standard Practice for Collection of Channel Samples of Coal in a Mine;* D5192–91, *Standard Practice for Collection of Coal Samples from Core;* and, D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

(1) *As-shipped coal* means raw or prepared coal that is loaded for shipment from the mine or loading facility.

(2) *Blended coal* means coals of various qualities and predetermined quantities mixed to control the final product.

(3) *Channel sample* means a sample of coal collected according to ASTM standard D4596–93 from a channel extending from the top to the bottom of a coal seam.

(4) *Commingled coal* means coal from different sources and/or types combined prior to shipment or use.

(5) *Core sample* means a cylindrical sample of coal that represents the thickness of a coal seam penetrated by drilling according to ASTM standard D5192–91.

(6) *Correction factor* means the difference between the equilibrium moisture and the inherent moisture in low rank coals for the purpose of § 870.20(a).

(7) *Equilibrium moisture* means the moisture in the coal as determined through ASTM standard D1412–93.

(8) *High-rank coals* means anthracite, bituminous, and subbituminous A and B coals.

(9) *Low-rank coals* means subbituminous C and lignite coals.

(10) *Slurry pond* means any natural or artificial pond or lagoon used for the settlement and draining of the solids from the slurry resulting from the coal washing process.

(11) *Tipple coal* means coal from a mine or loading facility that is ready for shipment.

[62 FR 60142, Nov. 6, 1997, as amended at 73 FR 67633, Nov. 14, 2008]

§ 870.19 How to calculate excess moisture in HIGH-rank coals.

Here are the requirements for calculating the excess moisture in high-rank coals for a calendar quarter. ASTM standards D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal*; D3302–91, *Standard Test Method for Total Moisture in Coal*; D5192–91, *Standard Practice for Collection of Coal Samples from Core*; D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C*; and, D4596–93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken,

Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left(IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Table 2 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bonafide sales, transfers of ownership, or uses by the operator during the quarter.

Table 1

Calculating TOTAL moisture percentage in HIGH-rank coals [1]

Collect and test each day you ship or use coal ▼	Convert daily test results to quarterly figures and report them ▼
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89. Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91. Obtain prior OSM approval for use of other procedures.	1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage. 2. Add up daily total moisture tonnage for the quarter. 3. Add up daily tonnage shipped or used in the quarter. 4. Divide 2 by 3. Report this total moisture percentage in high-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

[1] See §870.19 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in HIGH-rank coals [1]

Choose from 3 ways to collect and test ▼	Choose from 2 ways to time the tests and convert the results for quarterly reporting ▼
First Collect a core sample[2]. Follow procedures in ASTM D5192-91. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.	**First** Collect and test once each quarter. Report test results for that quarter on OSM-1. Test results need no converting; they are in quarterly units already.
Or second Collect a channel sample. Follow procedures in ASTM D4596-93. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93 or ASTM D3302-91.	**Or second** Create a 24-month baseline and update as follows: *For reporting months 1-24 . . .* Collect and test one sample each month. Each quarter, calculate a weighted average percentage of inherent moisture: • Multiply a month's inherent moisture percentage by tons produced or shipped. You now have the month's inherent moisture tonnage. • Add up 3 months of that inherent moisture tonnage. • Divide by tons produced or shipped in those 3 months. Report the quarter's weighted average percentage on OSM-1. *For all subsequent months . . .* Collect and test one sample for inherent moisture every 12 months. Calculate—and report in the following 4 quarters—one updated rolling average percentage: • Add to the annual sample percentage the inherent moisture percentages for the preceding 23 tests. • Divide by 24. Report the weighted average percentage on OSM-1.
Or third Collect a sample of blended coal, as-shipped coal, tipple coal, commingled coal, or coal from slurry ponds. Follow procedures in ASTM D2234-89. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.	

[1] See §870.19 for the incorporation by reference of the ASTM standards.
[2] Core sampling was approved by the ASTM effective January 1, 1992.

[62 FR 60143, Nov. 6, 1997]

§ 870.20 How to calculate excess moisture in LOW-rank coals.

Here are the requirements for calculating the excess moisture in low-rank coals for a calendar quarter. ASTM standards D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal;* D3302–91, *Standard Test Method for Total Moisture in Coal;* and, D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW.,

Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left(IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Tables 2 and 3 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bona fide sales, transfers of ownership, or uses by the operator during the quarter.

Table 1

Calculating TOTAL moisture percentage in LOW-rank coals [1]

Collect and test each day you ship or use coal ▼	**Convert test results to quarterly figures and report them ▼**
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89. Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91. Obtain prior OSM approval for use of other procedures.	Convert daily total moisture percentage to quarterly total moisture percentage: 1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage. 2. Add up daily total moisture tonnage for the quarter. 3. Add up daily tonnage shipped or used in the quarter. 4. Divide 2 by 3. Report this total moisture percentage in low-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in LOW-rank coals [1]

Collect and test once a month ▼	Convert test results to quarterly figures and report them ▼
Collect 1 sample of as-shipped coal. Follow procedures in ASTM D2234-89. Test the sample for equilibrium moisture. Follow laboratory procedures in ASTM D1412-93.	Calculate inherent moisture percentage for the quarter: • Average the 3 equilibrium moisture results from your monthly tests. • Add to this average a **Correction Factor** that you calculate for the first quarter according to Table 3 below. Report this inherent moisture percentage for the quarter on OSM-1.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

Table 3

Calculating the Correction Factor for Table 2 [1]

Collect and test in the first quarter a deduction is taken▼	Convert test results into a correction factor for all quarterly reports ▼
Collect 15 samples that are representative of the entire seam from a freshly exposed, unweathered coal seam face. Follow procedures in ASTM D1412-93 Appendix X1. Test each sample for two things: • Inherent moisture • Equilibrium moisture. Follow laboratory procedures in ASTM D1412-93 Appendix X1.	Use the test results to calculate a correction factor: • Average the 15 inherent moisture results from your tests. • Average the 15 equilibrium moisture results from your tests. • Subtract the average equilibrium moisture from the average inherent moisture. You now have a correction factor for the first quarter the deduction is taken, and all later quarters. Use it in Table 2 above. You may change the correction factor at any time by repeating the steps in this table. A correction factor applies to only the bench you sample. If you mine multiple benches or seams simultaneously, you may combine the sample results from the different benches or seams to calculate an average correction factor. You may update the correction factor by repeating the procedures or incorporating new test results with the initial result.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

[62 FR 60146, Nov. 6, 1997, as amended at 75 FR 60276, Sept. 29, 2010]

§ 870.21 Late payments.

(a) Fee payments postmarked later than 30 days after the calendar quarter for which the fee was owed are subject to interest. Late reclamation fee payments are subject to interest at the rate established by the U.S. Department of the Treasury for late charges on payments to the Federal Government. The Treasury current value of funds rate is published annually in the FEDERAL REGISTER and on Treasury's Web site.

(b) We will charge interest on unpaid reclamation fees from the 31st day following the end of the calendar quarter for which the fee payment is owed to the date of payment. If you are delinquent, we will bill you monthly and initiate whatever action is necessary

to collect full payment of all fees and interest.

(c) When a reclamation fee debt is more than 91 days overdue, a 6 percent annual penalty on the amount owed for fees will begin and will run until the date of payment. This penalty is in addition to the interest described in paragraph (a) of this section.

(d) For all delinquent fees, interest, and penalties, you must pay a processing and handling charge that we will set based upon the following components:

(1) For debts referred to a collection agency, the amount charged to us by the collection agency;

(2) For debts we processed and handled, a standard amount we set annually based upon similar charges by collection agencies for debt collection;

(3) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, but paid before litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(4) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(5) If not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(e) We will not charge prejudgment interest on any processing and handling charges.

[73 FR 67633, Nov. 14, 2008]

§ 870.22 Maintaining required production records.

(a) If you engage in or conduct a surface coal mining operation, you must maintain up-to-date records that contain at least the following information:

(1) The tons of coal you produced, bought, sold, or transferred, the amount of money you received per ton, the name of person to whom you sold or transferred the coal, and the date of each sale or transfer;

(2) The tons of coal you used and your date of your consumption;

(3) The tons of coal you stockpiled or inventoried that are not classified as sold for fee computation purposes under § 870.12; and

(4) For in situ coal mining operations, the total Btu value of gas you produced, the Btu value of a ton of coal in a place certified at least semiannually by an independent laboratory, and the amount of money you received for gas sold, transferred, or used.

(b) We must have access to your records of any surface coal mining operation for review. Your records must be available to us at reasonable times.

(c) We may inspect and copy any of your books or records that are necessary to substantiate the accuracy of your OSM–1 Form and payments. If the fee is paid at the maximum rate, we will not copy information relative to price. We will protect all copied information as authorized or required by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

(d) You must maintain your books and records for 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) If you do not maintain or make available your books and records as required in this section, we will estimate the fee due under this part through use of average production figures based upon the nature and acreage of your coal mining operation.

(1) We will assess the fee at the amount we estimate plus an additional 20 percent to account for possible error in our fee liability estimate.

(2) After you receive our fee liability estimate, you may request that we revise that estimate based upon your information. However, you must demonstrate that our fee liability estimate is incorrect. You may do this by providing adequate documentation that we find to be acceptable and comparable to the information required in § 870.19(a).

[73 FR 67633, Nov. 14, 2008]

§ 870.23 Consequences of noncompliance.

If you do not maintain adequate records, provide us with access to records of a surface coal mining operation, or pay overdue reclamation fees, including interest on late payments or

underpayments, we may take one or more of the following actions:

(a) Start a legal action against you;

(b) Report you to the Internal Revenue Service;

(c) Report you to State agencies responsible for taxation;

(d) Report you to credit bureaus;

(e) Refer you to collection agencies; or

(f) Take some other appropriate action against you.

[73 FR 67633, Nov. 14, 2008]

PART 872—MONEYS AVAILABLE TO ELIGIBLE STATES AND INDIAN TRIBES

Sec.

872.1 What does this Part do?
872.5 Definitions.
872.10 Information collection.
872.11 Where do moneys in the Fund come from?
872.12 Where do moneys distributed from the Fund and other sources go?
872.13 What moneys does OSM distribute each year?
872.14 What are State share funds?
872.15 How does OSM distribute and award State share funds?
872.16 Are there any restrictions on how States may use State share funds?
872.17 What are Tribal share Funds?
872.18 How does OSM distribute and award Tribal share funds?
872.19 Are there any restrictions on how Indian tribes may use Tribal share funds?
872.20 What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program?
872.21 What are historic coal funds?
872.22 How does OSM distribute and award historic coal funds?
872.23 Are there any restrictions on how you may use historic coal funds?
872.24 What are Federal expense funds?
872.25 Are there any restrictions on how OSM may use Federal expense funds?
872.26 What are minimum program make up funds?
872.27 How does OSM distribute and award minimum program make up funds?
872.28 Are there any restrictions on how you may use minimum program make up funds?
872.29 What are prior balance replacement funds?
872.30 How does OSM distribute and award prior balance replacement funds?
872.31 Are there any restrictions on how you may use prior balance replacement funds?
872.32 What are certified in lieu funds?
872.33 How does OSM distribute and award certified in lieu funds?
872.34 Are there any restrictions on how you may use certified in lieu funds?
872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 73 FR 67634, Nov. 14, 2008, unless otherwise noted.

§ 872.1 What does this part do?

This part sets forth procedures and general responsibilities for managing funds received under Title IV of the Surface Mining Control and Reclamation Act of 1977, as amended.

§ 872.5 Definitions.

As used in this part—

Allocate means to identify moneys in our records at the time they are received by the Fund. The allocation process identifies moneys in the Fund by the type of funds collected, including the specific State or Indian tribal share.

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Indian Abandoned Mine Reclamation Fund or *Indian Fund* means a separate fund that an Indian tribe established to account for moneys we award under parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the Indian Fund.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

State Abandoned Mine Reclamation Fund or *State Fund* means a separate fund that a State established to account for moneys we award under parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the State Fund.

§ 872.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and

Budget (OMB) has approved the information collection requirements of part 872 and assigned it control number 1029–0054. The information is used to determine whether States and Indian tribes will be granted funds for reclamation activities. States and Indian tribes must respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 872.11 Where do moneys in the Fund come from?

Revenue to the Fund includes—

(a) Reclamation fees we collect under section 402 of SMCRA and part 870 of this chapter;

(b) Amounts we collect from charges for use of land acquired or reclaimed with moneys from the Fund under part 879 of this chapter;

(c) Moneys we recover through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under part 882 of this chapter;

(d) Moneys we recover from the sale of lands acquired with moneys from the Fund or by donation;

(e) Moneys donated to us for the purpose of abandoned mine land reclamation; and

(f) Interest and any other income earned from investment of the Fund. We will credit interest and other income only to the Secretary's share.

§ 872.12 Where do moneys distributed from the Fund and other sources go?

(a) Each State or Indian tribe with an approved reclamation plan must establish an account to be known as a State or Indian Abandoned Mine Reclamation Fund. These funds will be managed in accordance with the OMB Circular A–102.

(b) Revenue for the State and Indian Abandoned Mine Reclamation Funds will include—

(1) Amounts we granted for purposes of conducting the approved reclamation plan;

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

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

(4) Moneys the State or Indian tribe recovered from the sale of lands acquired under Title IV of SMCRA; and

(5) Such other moneys as the State or Indian tribe decides should be deposited in the State or Indian Abandoned Mine Reclamation Fund for use in carrying out the approved reclamation program.

(c) Moneys deposited in State or Indian Abandoned Mine Reclamation Funds must be used to carry out the reclamation plan approved under part 884 of this chapter and projects approved under § 886.27 of this chapter.

§ 872.13 What moneys does OSM distribute each year?

(a) Under Title IV of SMCRA, each Federal fiscal year we must distribute to you, the States and Indian tribes with approved reclamation plans, the moneys listed in this section. We distribute all Fund moneys and other moneys from the Treasury that have been designated for mandatory distribution. We provide information to you showing how we calculated your distribution. We distribute the following moneys:

(1) State share funds to uncertified States as described in § 872.14;

(2) Tribal share funds to uncertified Indian tribes as described in § 872.17;

(3) Historic coal funds to uncertified States and Indian tribes as described in § 872.21;

(4) Minimum program make up funds to eligible uncertified States and Indian tribes as described in § 872.26;

(5) Prior balance replacement funds to certified and uncertified States and Indian tribes as described in § 872.29; and

(6) Certified in lieu funds to certified States and Indian tribes as described in § 872.32.

(b) We calculate annual fee collections for coal produced in the previous Federal fiscal year on a net cash basis. This means that we use collections that are paid for the current Federal fiscal year to adjust fees that were

overpaid or underpaid in prior fiscal years.

(c) We distribute any Congressionally-appropriated funds for grants to you out of the Federal expense funds when the appropriation becomes available.

(d) You may apply for any or all distributed funds at any time after the distribution using the procedures in part 885 of this chapter for certified States and Indian tribes or part 886 for uncertified States and Indian tribes.

§ 872.14 What are State share funds?

''State share funds'' are moneys we distribute to you from your State share of the Fund each Federal fiscal year under section 402(g)(1)(A) of SMCRA. Your State share of the Fund is 50 percent of the reclamation fees we collected from within your State (excluding fees collected on Indian lands) and allocated to you, the State, in the Fund for coal produced in the previous fiscal year.

§ 872.15 How does OSM distribute and award State share funds?

(a) To be eligible to receive State share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these State share funds to you as follows:

(1) We annually distribute State share funds to you as shown in the following table:

For the Federal fiscal year(s) beginning . . .	The amount of State share funds we annually distribute to you will be . . .
(i) October 1, 2007 and October 1, 2008.	50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(ii) October 1, 2009 and October 1, 2010.	75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iii) October 1, 2011 and continuing through September 30, 2022.	100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iv) October 1, 2022 (fiscal year 2023).	The amount remaining in your State share of the Fund.

(2) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.16 Are there any restrictions on how States may use State share funds?

Yes. You may only use State share funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under part 876 of this chapter;

(e) Land acquisition under § 879.11 of this chapter; and

(f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.17 What are Tribal share funds?

''Tribal share funds'' are moneys we distribute to you from your Tribal share of the Fund each Federal fiscal year under section 402(g)(1)(B) of SMCRA. Your Tribal share of the Fund is 50 percent of the reclamation fees we collected and allocated to you, the Indian tribe(s), in the Fund for coal produced in the previous fiscal year from the Indian lands in which you have an interest.

§ 872.18 How will OSM distribute and award Tribal share funds?

(a) To be eligible to receive Tribal share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these Tribal share funds to you as follows:

(1) We annually distribute Tribal share funds to you as shown in the following table:

For the Federal fiscal year(s) beginning . . .	The amount of Tribal share funds we annually distribute to you will be . . .
(i) October 1, 2007 and October 1, 2008.	50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(ii) October 1, 2009 and October 1, 2010.	75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iii) October 1, 2011 and continuing through September 30, 2022.	100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iv) October 1, 2022 (fiscal year 2023).	The amount remaining in your Tribal share of the Fund.

(2) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.19 Are there any restrictions on how Indian tribes may use Tribal share funds?

Yes. You may only use Tribal share funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under part 876 of this chapter;

(e) Land acquisition under § 879.11 of this chapter; and

(f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.20 What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program ?

Under section 402(h)(4)(B) of SMCRA, we will make available any moneys that remain allocated to RAMP and that were not appropriated or moved to other allocations before December 20, 2006, for possible transfer to the three United Mine Workers of America (UMWA) health care plans described in section 402(h)(2) of SMCRA.

§ 872.21 What are historic coal funds?

(a) ''Historic coal funds'' are moneys provided under section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in your State or on Indian lands in which you have an interest. Under the Surface Mining Control and Reclamation Act Amendments of 2006, which were enacted as Division C, Title II, Subtitle A of P.L. 109–432, each year we allocate and distribute 30 percent of annual AML fee collections for coal produced in the previous fiscal year plus 60 percent of any other revenue to the Fund as historic coal funds to supplement grants to States and Indian tribes.

(b) Historic coal funds also include moneys we reallocate under sections 401(f)(3)(A)(i), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA, including:

(1) The moneys we reallocate based on prior balance replacement funds distributed under § 872.29, which will be available to supplement grants beginning with Federal fiscal year 2023; and

(2) The moneys we reallocate based on certified in lieu funds distributed under § 872.32, which will be available to supplement grants in Federal fiscal years 2009 through 2022.

§ 872.22 How does OSM distribute and award historic coal funds?

(a) To be eligible to receive historic coal funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter;

(2) You cannot be certified under section 411(a) of SMCRA; and

(3) You must have unfunded Priority 1 and 2 coal problems remaining under sections 403(a)(1) and (2) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we distribute these moneys to you using a formula based on the amount of coal historically produced before August 3, 1977, in your State or from the Indian lands concerned.

(c) We annually distribute historic coal funds to you as shown in the following table:

For the Federal fiscal years beginning . . .	The amount of historic coal funds we annually distribute to you will be . . .
(1) October 1, 2007 and October 1, 2008.	50 percent of the amount we calculate using the formula described in paragraph (b) of this section.
(2) October 1, 2009 and October 1, 2010.	75 percent of the amount we calculated using the formula described in paragraph (b) of this section.
(3) October 1, 2011 and continuing through September 30, 2022.	100 percent of the amount we calculate using the formula described in paragraph (b) of this section.
(4) October 1, 2022 (fiscal year 2023), and thereafter.	100 percent of the amount we calculate using the formula described in paragraph (b) of this section until funds are no longer available or you have reclaimed your remaining Priority 1 and 2 coal problems.

(d) In any given year, we will only distribute to you the historic coal funds that you need to reclaim your unfunded Priority 1 or 2 coal problems. Your distribution of State or Tribal share funds under § 872.14 or § 872.17 plus your distribution of historic coal funds along with unused funds from prior allocations could be more than you need to reclaim your remaining high priority problems. If that occurs, we will reduce the historic coal funds we distribute to you to the amount that you need to fully fund reclamation of all your remaining Priority 1 or 2 coal problems.

(e) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.23 Are there any restrictions on how you may use historic coal funds?

Yes. You may only use historic coal funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under part 876 of this chapter;

(e) Land acquisition under § 879.11 of this chapter; and

(f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.24 What are Federal expense funds?

''Federal expense funds'' are moneys available in the Fund that are not allocated or distributed as State share funds (§ 872.14), Tribal share funds (§ 872.17), historic coal funds (§ 872.21), or minimum program make up funds (§ 872.26). Congress must appropriate Federal expense funds before we may expend them.

§ 872.25 Are there any restrictions on how OSM may use Federal expense funds?

(a) We may use Federal expense funds only for the purposes in sections 402(g)(3)(A) through (D) and 402(g)(4) of SMCRA, which include the following:

(1) The Small Operator Assistance Program under section 507(c) of SMCRA (not more than $10 million annually);

(2) Emergency projects under State, Tribal, and Federal programs under section 410 of SMCRA;

(3) Nonemergency projects in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA;

(4) The Secretary's administration of Title IV of SMCRA and this subchapter; and

(5) Projects authorized under section 402(g)(4) in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA.

(b) We will not deduct moneys that we have annually allocated or distributed as Federal expense funds under sections 402(g)(3)(A) through (D) or (4) of SMCRA for any State or Indian tribe from moneys we annually allocate or distribute to a State or Indian tribe under the authority of sections 402(g)(1) or (5) of SMCRA.

(c) We expend moneys under the authority in section 402(g)(3)(C) of SMCRA only in States or on Indian lands where the State or Indian tribe does not have an abandoned mine reclamation program approved under section 405 of SMCRA.

§ 872.26 What are minimum program make up funds?

(a) ''Minimum program make up funds'' are additional moneys we distribute each Federal fiscal year to eligible States and Indian tribes to make up the difference between their total distribution of other funds and $3 million. The source of these funds is moneys in the Secretary's 20 percent share of the Fund that are authorized for mandatory distribution.

(b) To be eligible to receive funds under this section, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter;

(2) You cannot have certified under section 411(a) of SMCRA;

(3) The total amount you receive annually from State share funds (§ 872.14) or Tribal share funds (§ 872.17), historic coal funds (§ 872.21), and prior balance replacement funds (§ 872.29) must be less than $3 million; and

(4) You must need more than the total of funds you will receive from State or Tribal share, historic coal, and prior balance replacement funds to reclaim Priority 1 and 2 coal problems under sections 403(a)(1) and (2) of SMCRA in your State or on Indian lands within your jurisdiction.

(c) We will make funds available to the States of Missouri and Tennessee under this section to reclaim Priority 1 and 2 coal problems included in the AML inventory, provided each State has a reclamation plan approved under part 884 of this chapter.

§ 872.27 How does OSM distribute and award minimum program make up funds?

(a) If you meet the eligibility requirements in § 872.26(b), we will distribute these minimum program make up funds to you as follows:

(1) We calculate your total distribution under this part by first adding, in order, your prior balance replacement funds distribution (§ 872.29), your applicable State or Tribal share funds distribution (§ 872.14 or § 872.17), and your historic coal funds distribution (§ 872.21). If the sum of these funds is less than $3 million, we calculate the amount of minimum program make up funds to add to your distribution under this section to increase it to that level.

(2) For each of the Federal fiscal years 2007 through 2022, we add minimum program make up funds to your combined distribution of prior balance replacement, State or Tribal share, and historic coal funds as shown in the following table:

For each of the Federal fiscal years beginning . . .	The amount of minimum program make up funds we add to your distribution will be . . .
(i) October 1, 2007 and October 1, 2008.	50 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(ii) October 1, 2009 and October 1, 2010.	75 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(iii) October 1, 2011 and continuing through September 30, 2022.	100 percent of the amount that we calculated should be added under paragraph (a)(1) of this section as long as you have at least $3 million of Priority 1 and 2 coal problems remaining.
(iv) October 1, 2022 and thereafter.	to the extent funds are available, 100 percent of the amount that we calculated should be added under paragraph (a)(1) until you have less than $3 million of Priority 1 and 2 coal problems remaining.

(b) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.28 Are there any restrictions on how you may use minimum program make up funds?

Yes. You may only use minimum program make up funds for:

(a) Priority 1 and 2 coal reclamation under sections 403(a)(1) and (2) of SMCRA;

(b) Priority 3 reclamation that is part of Priority 1 or 2 coal reclamation under sections 403(a)(1) or (2) of SMCRA and § 874.13 of this chapter;

§ 872.29 What are prior balance replacement funds?

''Prior balance replacement funds'' are moneys we must distribute to you instead of the moneys we allocated to your State or Tribal share of the Fund before October 1, 2007, but did not distribute to you because Congress did not appropriate them. They come from general funds of the United States

Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, we distribute prior balance replacement funds to you, the State or Indian tribe, for seven years starting in the Federal fiscal year beginning October 1, 2008.

§ 872.30 How does OSM distribute and award prior balance replacement funds?

(a) We distribute prior balance replacement funds to you as follows:

(1) In an amount equal to the aggregate, unappropriated amount allocated to you before October 1, 2007, under sections 402(g)(1)(A) or (B) of SMCRA;

(2) If you are, or are not, certified under section 411(a) of SMCRA; and

(3) Subject to § 872.35, in seven equal annual installments beginning with the 2008 Federal fiscal year which starts on October 1, 2007.

(b) We award these funds to you in grants according to the provisions of part 885 of this chapter for certified States and Indian tribes or part 886 of this chapter for uncertified States and Indian tribes.

(c) At the same time we distribute prior balance replacement funds to you under this section, we transfer the same amount to historic coal funds from moneys in your State or Tribal share of the Fund that were allocated to you before October 1, 2007. The transferred funds will be available for annual grants under § 872.21 for the Federal fiscal year beginning October 1, 2022, and annually thereafter. We will allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

§ 872.31 Are there any restrictions on how you may use prior balance replacement funds?

(a) Yes. If you are certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for those purposes your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development.

(b) Yes. If you are not certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for the purposes in section 403 of SMCRA, which include:

(1) Reclamation of coal problems under § 874.12 of this chapter;

(2) Water supply restoration under § 874.14 of this chapter; and

(3) Maintenance of the AML inventory.

§ 872.32 What are certified in lieu funds?

''Certified in lieu funds'' are moneys that we distribute to you, the certified State or Indian tribe, in lieu of moneys allocated to your State or Tribal share of the Fund after October 1, 2007. Certified in lieu funds come from general funds of the United States Treasury that are otherwise unappropriated. Beginning with the 2009 Federal fiscal year which starts on October 1, 2008, we distribute certified in lieu funds to you under section 411(h)(2) of SMCRA.

§ 872.33 How does OSM distribute and award certified in lieu funds?

(a) You must be certified under section 411(a) of SMCRA to receive certified in lieu funds.

(b) If you meet the eligibility requirement in paragraph (a) of this section, we distribute these certified in lieu funds to you as follows:

(1) Starting in the Federal fiscal year that begins on October 1, 2008, we annually distribute funds to you based on 50 percent of reclamation fees received for coal produced during the previous Federal fiscal year in your State or on Indian lands within your jurisdiction;

(2) The funds we annually distribute to you are in lieu of moneys we otherwise would distribute to you from State share funds under § 872.14 or Tribal share funds under § 872.17 had you not been excluded from receiving those funds under section 401(f)(3)(B) of SMCRA; and

(3) Subject to § 872.35, we annually distribute certified in lieu funds to you as shown in the following table:

In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(i) October 1, 2008	25 percent of your 50 percent share of annual reclamation fee collections.
(ii) October 1, 2009	50 percent of your 50 percent share of annual reclamation fee collections.
(iii) October 1, 2010	75 percent of your 50 percent share of annual reclamation fee collections.

In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(iv) October 1, 2011, and thereafter.	100 percent of your 50 percent share of annual reclamation fee collections.

(c) We award these funds to you in grants according to the provisions of part 885 of this chapter.

(d) At the same time we distribute certified in lieu funds to you under this section, we transfer the same amount to historic coal funds and make those funds available for annual grants under §872.21 that same Federal fiscal year. We allocate, distribute, and award the transferred funds according to the provisions of §§872.21, 872.22, and 872.23.

(e) We will distribute to you the amounts we withhold under paragraph (b) of this section in two equal annual installments. We will do this in Federal fiscal years 2018 and 2019.

§872.34 Are there any restrictions on how you may use certified in lieu funds?

There are no limitations or restrictions on the use of certified in lieu funds in the Surface Mining Control and Reclamation Act Amendments of 2006 which were enacted as Division C, Title II, Subtitle A of P.L. 109–432.

§872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

(a) In any fiscal year in which the amount of Treasury funds required to be transferred under §§872.30 and 872.33 of this chapter and under section 402(i)(1) of SMCRA exceeds the maximum annual limit of $490 million, we will adjust the amount of these payments to reduce them to the level of the cap. Each distribution or transfer for the FY will be reduced by the same percentage.

(b) We will not include amounts under section 402(h)(5)(A) as part of this calculation.

PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

Sec.
873.1 Scope.
873.11 Applicability.
873.12 Future set-aside program criteria.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 59 FR 28170, May 31, 1994, unless otherwise noted.

§873.1 Scope.

This part provides requirements for the award of grants to States or Indian tribes for the establishment of special trust accounts that will provide funds for coal reclamation purposes after September 30, 1995.

§873.11 Applicability.

The provisions of this part apply to funds awarded, as defined in §872.5 of this chapter, under section 402(g)(6)(A) of SMCRA before its amendment on December 20, 2006, and their use by the States or Indian tribes for coal reclamation purposes after September 30, 1995.

[73 FR 67638, Nov. 14, 2008]

§873.12 Future set-aside program criteria.

(a) Any State or Indian tribe may receive and retain, without regard to the limitation referred to in section 402(g)(1)(D) of SMCRA, up to 10 percent of the total of the funds distributed annually to such State or Indian tribe under sections 402(g)(1) and (5) of SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006. The State or Indian tribe must deposit all set-aside funds awarded into a special fund established under State or Indian tribal law. The State or Indian tribe must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(b) Moneys the State or Indian tribe deposited in the special fund account, together with any interest earned, are considered State or Indian tribal moneys.

[73 FR 67638, Nov. 14, 2008]

PART 874—GENERAL RECLAMATION REQUIREMENTS

Sec.
874.1 Scope.
874.5 Definitions.
874.10 Information collection.

874.11 Applicability.
874.12 Eligible coal lands and water.
874.13 Reclamation objectives and priorities.
874.14 Water supply restoration.
874.15 Limited liability.
874.16 Contractor eligibility.
874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

§ 874.1 Scope.

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

[59 FR 28171, May 31, 1994]

§ 874.5 Definitions.

As used in this Part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67638, Nov. 14, 2008]

§ 874.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 874 and assigned it control number 1029–0113. This information is used to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67639, Nov. 14, 2008]

§ 874.11 Applicability.

You must comply with the requirements in this part for—

(a) Reclamation projects using moneys from the Fund;

(b) Reclamation projects using prior balance replacement funds provided to uncertified States and Indian tribes under § 872.29 of this chapter; or

(c) Coal reclamation projects by certified States and Indian tribes required to maintain certification under section 411(a) of SMCRA and the agreement required by §§ 875.13(a)(3) and 875.14(b) of this chapter to maintain that certification.

[73 FR 67639, Nov. 14, 2008]

§ 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 unreclaimed 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 or any prior balance replacement funds provided under § 872.29 of this chapter may be used.

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and:

(i) The date on which the Secretary approved a State regulatory program pursuant to section 503 of the Act (30 U.S.C. 1253) for a State or September 28, 1994, for an Indian tribe, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(ii) November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) The site qualifies as a priority 1 or 2 site pursuant to section 403(a)(1) and (2) of the Act. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(e) An uncertified State or Indian tribe may expend funds made available under paragraphs 402(g)(1) and (5) of SMCRA and prior balance replacement funds under section 411(h)(1) of SMCRA for the reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraphs (a), (b), or (c) of this section that qualify as a Priority 1 or 2 site under section 403(a) of SMCRA.

(f) With respect to lands eligible under paragraph (d) or (e) of this section, moneys available from sources outside the Fund or that are ultimately recovered from responsible parties must either be used to offset the cost of the reclamation or transferred to the Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor a State or Indian tribe performing reclamation under paragraph (d) or (e) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Act.

(h) Surface coal mining operations on lands eligible for remining pursuant to section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by § 800.40 of this chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under section 410 of the Act.

[47 FR 28596, June 30, 1982, as amended at 59 FR 28171, May 31, 1994; 73 FR 67639, Nov. 14, 2008]

§ 874.13 Reclamation objectives and priorities.

(a) When you conduct reclamation projects under this part you may follow OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) and the expenditures must reflect the following priorities in the order stated:

(1) *Priority 1:* The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) *Priority 2:* The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(3) *Priority 3:* The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(ii) or (a)(2)(ii) of this section.

(b) This paragraph applies to State or Tribal share funds available under §§ 872.14 and 872.17 of this chapter and historic coal funds available under § 872.21 of this chapter. You may expend these funds to reclaim Priority 3 lands and waters, if either of the following conditions applies:

(1) You have completed all of the Priority 1 and Priority 2 reclamation in the jurisdiction of your State or Indian tribe; or

(2) The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects including past, current, and future Priority 1 or Priority 2 reclamation projects. Expenditures under this paragraph must either:

(i) Facilitate the Priority 1 or Priority 2 reclamation; or

(ii) Provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of your State or Indian tribe.

[73 FR 67639, Nov. 14, 2008]

§ 874.14 Water supply restoration.

(a) Any State or Indian tribe that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under §§ 872.16, 872.19, 872.23, and 872.31 of this chapter for water supply restoration projects. For purposes of this section, ''water supply restoration projects'' are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For funds awarded before December 20, 2006, any uncertified State or Indian tribe may expend up to 30 percent of the funds distributed to it for water supply restoration projects.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse affects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

[59 FR 28171, May 31, 1994, as amended at 73 FR 67639, Nov. 14, 2008]

§ 874.15 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28172, May 31, 1994]

§ 874.16 Contractor eligibility.

To receive moneys from the Fund or Treasury funds provided to uncertified States and Indian tribes under § 872.29 of this chapter or to certified States or Indian tribes for coal AML reclamation as required to maintain certification under section 411(a) of SMCRA, every successful bidder for an AML contract must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.

[73 FR 67639, Nov. 14, 2008]

§ 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

This section tells you, the AML agency, what to do when considering an abandoned mine land reclamation project as government-financed construction under part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) *Consultation with the Title V regulatory authority.* In consultation with the Title V regulatory authority, you must make the following determinations:

(1) You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) You must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) *Concurrence with the Title V regulatory authority.* If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) *Documentation.* You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) *Limitation.* If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal.

[64 FR 7483, Feb. 12, 1999]

PART 875—CERTIFICATION AND NONCOAL RECLAMATION

Sec.
875.1 Scope.
875.5 Definitions.
875.10 Information collection.
875.11 Applicability.
875.12 Eligible lands and water prior to certification.
875.13 Certification of completion of coal sites.
875.14 Eligible lands and water after certification.
875.15 Reclamation priorities for noncoal program.
875.16 Exclusion of certain noncoal reclamation sites.
875.17 Land acquisition authority—noncoal.
875.18 Lien requirements.
875.19 Limited liability.
875.20 Contractor eligibility.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

§ 875.1 Scope.

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

§ 875.5 Definitions.

As used in this Part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67640, Nov. 14, 2008]

§ 875.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 875 and assigned it control number 1029–0103. This information establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with SMCRA and the Omnibus Budget Reconciliation Act of 1990. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67640, Nov. 14, 2008]

§ 875.11 Applicability.

(a) If you are a State or Indian tribe that has not certified under section 411(a) of SMCRA, you must follow these noncoal reclamation requirements when you use State share funds under § 872.16, Tribal share funds under § 872.19, or historic coal funds under § 872.23 to conduct reclamation projects on lands or water affected by mining of minerals and materials other than coal.

(b) If you are a State or Indian tribe that has certified under section 411(a) of SMCRA:

(1) you must use State or Tribal share funds distributed to you under section 402(g)(1) of SMCRA before October 1, 2007 in accordance with this part; and

(2) you may use prior balance replacement funds distributed to you under section 411(h)(1) of SMCRA, certified in lieu funds distributed to you under section 411(h)(2), or both to maintain certification as required by §§ 875.13 and 875.14. The noncoal reclamation requirements of this part do not apply to the use of prior balance replacement funds or certified in lieu funds.

[73 FR 67640, Nov. 14, 2008]

§ 875.12 Eligible lands and water prior to certification.

Noncoal lands and water are eligible for reclamation if:

(a) They were mined or affected by mining processes;

(b) They were mined and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977;

(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 by the State 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, moneys sufficient to complete the reclamation may be sought under part 886 of this chapter;

(d) The reclamation has been requested by the Governor of the State or equivalent head of the Indian tribe; and

(e) The reclamation is necessary to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices.

[59 FR 28172, May 31, 1994, as amended at 73 FR 67640, Nov. 14, 2008]

§ 875.13 Certification of completion of coal sites.

(a) The Governor of a State, or the equivalent head of an Indian tribe, may submit to the Secretary a certification of completion of coal sites. The certification must express the finding that the State or Indian tribe has achieved all existing known coal-related reclamation objectives for eligible lands and waters under section 404 of SMCRA or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion must contain:

(1) A description of both the rationale and the process used to arrive at the above finding for the completion of all coal-related reclamation under section 403(a)(1) through (3).

(2) A brief summary and resolution of all relevant public comments concerning coal-related impacts, problems, and reclamation projects received by the State or Indian tribe prior to preparation of the certification of completion.

(3) A State or Indian tribe agreement to acknowledge and give top priority to any coal-related problem(s) that may be found or occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program.

(b) After review and verification of the information contained in the certification of completion, the Director shall provide notice in the FEDERAL REGISTER and opportunity for public comment. After receipt and evaluation of all public comments and a determination by the Director that the certification is correct, the Director shall concur with the certification and provide final notice of such concurrence in the FEDERAL REGISTER. This concurrence shall be based upon the State's or Indian tribes commitment to give top priority to any coal problem which may thereafter be found or occur.

(c) Following concurrence by the Director, a State or Indian tribe may implement a noncoal reclamation program pursuant to provisions in section 411 of SMCRA.

(d) The Director may, on his or her own initiative, make the certification referred to in paragraph (a) of this section on behalf of your State or Indian tribe if:

(1) Based upon information contained in the AML inventory, the Director determines that all coal reclamation projects meeting the priorities described in § 874.13(a) of this chapter in the jurisdiction of your State or Indian tribe have been completed; and

(2) Before making any determination, the Director provides the public an opportunity to comment through a notice in the FEDERAL REGISTER.

[59 FR 28172, May 31, 1994, as amended at 73 FR 67640, Nov. 14, 2008]

§ 875.14 Eligible lands and water after certification.

(a) Following certification, eligible noncoal lands, waters, and facilities are those—

(1) Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status before August 3, 1977. However, for Federal lands, waters, and facilities under the jurisdiction of the Forest Service, the eligibility date is August 28, 1974. For Federal lands, waters and facilities under the jurisdiction of the Bureau of Land Management, the eligibility date is November 26, 1980; and

(2) For which there is no continuing reclamation responsibility under State or other Federal laws.

(b) If eligible coal problems are found or occur after certification, you must submit to us a plan that describes the approach and funds that will be used to address those problems in a timely manner. You may address any eligible coal problems with the certified in lieu

funds that you have already received or will receive from § 872.32 of this chapter. You may also use the prior balance replacement funds received from § 872.29 of this chapter to address coal problems subsequent to certification. Any coal reclamation projects that you do must conform to sections 401 through 410 of SMCRA and part 874 of this chapter.

[73 FR 67640, Nov. 14, 2008]

§ 875.15 Reclamation priorities for noncoal program.

(a) This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(b) Following certification pursuant to § 875.13, the projects and construction of public facilities identified in paragraph (a) of this section shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices;

(2) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, State, or Federal public health or safety requirements. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(d) Notwithstanding the requirements specified in paragraph (b) of this section, where the Governor of a State or the equivalent head of an Indian tribe, after determining that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States or on Tribal lands impacted by coal or minerals development, submits a grant application as required by paragraph (e) of this section and the Director concurs in such need, as set forth in paragraph (f) of this section, the Director may grant funds made available under section 402(g)(1) of the Act, 30 U.S.C. 1232, to carry out such activities or construction.

(e) To qualify for funding pursuant to the authority in paragraph (d) of this section, a State or Indian tribe must submit a grant application that specifically sets forth:

(1) The need or urgency for the activity or the construction of the public facility;

(2) The expected impact the project will have on the coal or minerals industry in the State or Indian tribe;

(3) The availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

(4) Documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency;

(5) The impact on the State or Indian tribe, the public, and the minerals industry if the activity or facility is not funded;

(6) The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) An analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the State or Indian tribe.

(f) After review of the information contained in the application, the Director will, if necessary to ensure adequate public notification, prepare a FEDERAL REGISTER notice regarding

the State's or Indian Tribe's submission and provide for public comment. The Director will then:

(1) Evaluate any comments received;

(2) Determine whether the funding meets the requirements of this part;

(3) Determine whether the funding is in the best interest of the State or Indian tribe AML program;

(4) If the determinations under paragraphs (f)(2) and (f)(3) of this section are positive, approve the request for funding the activity or construction; and

(5) Approve funding under paragraph (f)(4) of this section only at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977.

[59 FR 28173, May 31, 1994, as amended at 68 FR 9502, Feb. 27, 2003]

§ 875.16 Exclusion of certain noncoal reclamation sites.

(a) You, the uncertified State or Indian tribe, may not use moneys from the Fund or from prior balance replacement funds provided under §872.29 of this chapter for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

(b) You, the certified State or Indian tribe, may not use moneys distributed from the Fund under section 402(g)(1) of SMCRA for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

[73 FR 67640, Nov. 14, 2008]

§ 875.17 Land acquisition authority—noncoal.

The requirements specified in parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) shall apply to a State's or Indian tribe's noncoal program except that, for purposes of this section, the references to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

[59 FR 28173, May 31, 1994]

§ 875.18 Lien requirements.

The lien requirements found in part 882—Reclamation on Private Land shall apply to a State's or Indian tribe's noncoal reclamation program under section 411 of the Act, except that for purposes of this section, references made to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

[59 FR 28173, May 31, 1994]

§ 875.19 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28173, May 31, 1994]

§ 875.20 Contractor eligibility.

Every successful bidder for any contract by an uncertified State or Indian tribe under this part, or for a contract by a certified State or Indian tribe to undertake noncoal reclamation using moneys distributed from the Fund under section 402(g)(1) of SMCRA, must be eligible under §§773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. This section does not apply to any contract by a certified State or Indian tribe that is not for coal reclamation.

[73 FR 67641, Nov. 14, 2008]

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.
876.1 Scope.
876.10 Information collection.
876.12 Eligibility.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 59 FR 28174, May 31, 1994, unless otherwise noted.

§ 876.1 Scope.

This part establishes the requirements and procedures for the preparation, submission and approval of State or Indian tribe Acid Mine Drainage Treatment and Abatement Programs.

§ 876.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 876 and assigned it control number 1029–0104. OSM will use the information to determine if the State's or Indian tribe's Acid Mine Drainage Abatement and Treatment Programs is in compliance with legislative mandate. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67641, Nov. 14, 2008]

§ 876.12 Eligibility.

(a) Beginning December 20, 2006, any uncertified State or Indian tribe having an approved reclamation program may receive and retain, without regard to the limitation in section 402(g)(1)(D) of SMCRA, up to 30 percent of the total of the funds distributed annually to that State or Indian tribe under section 402(g)(1) of SMCRA (State or Tribal share) and section 402(g)(5) of SMCRA (historic coal funds). For funds awarded before December 20, 2006, any uncertified State or Indian tribe may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this section must be deposited into an acid mine drainage abatement and treatment fund established under State or Indian tribal law.

(b) Before depositing funds under this part, an uncertified State or Indian tribe must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that moneys in the account may only be used for the abatement of the causes and treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units (as defined in paragraph (c) of this section) affected by coal mining practices.

(c) As used in paragraph (b) of this section, ''qualified hydrologic unit'' means a hydrologic unit:

(1) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(2) That contains lands and waters that are:

(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(d) After the conditions specified in paragraphs (a) and (b) of this section are met, OSM may approve a grant and the State or Indian tribe may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State or Indian tribal moneys.

[73 FR 67641, Nov. 14, 2008]

PART 877—RIGHTS OF ENTRY

Sec.
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: 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.

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

Sec.
879.1 Scope.
879.5 Definitions.
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: 30 U.S.C. 1201 *et seq.*

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 you, a State or Indian tribe with an approved reclamation program which has not certified completion of coal reclamation, or by us. It also provides for the management and disposition of lands acquired by the OSM, State, or Indian tribe.

[73 FR 67641, Nov. 14, 2008]

§879.5 Definitions.

As used in this part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67641, Nov. 14, 2008]

§879.11 Land eligible for acquisition.

(a) We may acquire land adversely affected by past coal mining practices with moneys from the Fund. If approved in advance by us, you, an uncertified State or Indian tribe, may also acquire land adversely affected by past coal mining practices with moneys from the Fund or with prior balance replacement funds provided under §872.29 of this chapter. Our approval must be in writing, and we must make a finding that the land 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. For the purposes of this paragraph, ''permanent facility'' means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(b) You, an uncertified State or Indian tribe, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds provided under §872.29 of this chapter. We, OSM, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

(1) Before the approval of the acquisition, the reclamation program seeking to acquire the site will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of their reclamation program.

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

(c) Land adversely affected by past coal mining practices may be acquired by us if the acquisition is an integral

and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements in section 407(h) of SMCRA.

(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.

[47 FR 28597, June 30, 1982, as amended at 73 FR 67641, Nov. 14, 2008]

§ 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, of 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) We will handle all moneys received under this paragraph as unused funds in accordance with §886.20 of this chapter.

[47 FR 28597, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008]

PART 880—MINE FIRE CONTROL

Sec.

880.1 Scope.
880.5 Definitions.
880.11 Qualifications of projects.
880.12 Cooperative agreements.
880.13 Project implementation.
880.14 Administration of contributions.
880.15 Assistance by States or Indian tribes, local authorities, and private parties.
880.16 Civil rights.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

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.

(h) *Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[48 FR 37378, Aug. 18, 1983. Redesignated and amended at 59 FR 52377, Oct. 17, 1994; 73 FR 67642, Nov. 14, 2008]

§ 880.11 Qualifications of projects.

The purpose of all projects is to prevent injury and loss of life, protect public health, conserve natural resources, or protect public and private property. Federal funds cannot be used to fund projects in privately owned operating coal mines. Further, any such cooperative agreement that is entered into under the Energy Policy Act of 1992 with an AML State eligible to receive funds from the Appalachian Regional Development Commission is not subject to review by that Commission.

[59 FR 52377, Oct. 17, 1994]

§ 880.12 Cooperative agreements.

(a) OSM shall, upon application by a State or Indian tribe with an approved abandoned mine reclamation program, enter into a cooperative agreement with the State or Indian tribe to control or extinguish fires in coal formations.

(b) OSM may conduct coal formation fire control projects in States not having an approved abandoned mine reclamation program or on Indian lands if the tribe does not have an approved abandoned mine reclamation program. However, upon application by such a State or Indian tribe, OSM may enter into a cooperative agreement with the State or Indian tribe and the local authorities to control or extinguish fires in coal formations. OSM shall require in connection with any project for the control or extinguishment of fires in any inactive coal mine on lands not owned or controlled by the United States or any of its agencies, except where such project is necessary for the protection of lands or other property owned or controlled by the United States or any of its agencies in such a State that: (1) the State or the person owning or controlling such lands contribute on a matching basis 50 percent of the cost of planning and executing such project, or (2) if such State or person furnishes evidence satisfactory to the Secretary of an inability to make the immediately matching contribution herein provided for, that such State or person pay the Government, within such time as the Secretary shall determine, an amount equal to 50 percent of the cost of planning and executing such project. If the project is funded by the Appalachian Regional Commission, the Federal share shall not exceed 75 percent of the cost of the project.

(c) OSM is authorized to conduct fire control projects on lands owned or controlled by the United States. However, upon application by another Federal agency having jurisdiction for lands owned or controlled by the United States, or a State or Indian tribe having an approved abandoned mine reclamation program and agreements with Federal agencies to conduct such projects on Federal lands within its boundaries, OSM may enter into an agreement with either the other Federal agency or State or Indian tribe to

control or extinguish fires in coal formations. There are no cost sharing requirements for this type of project.

[59 FR 52378, Oct. 17, 1994]

§ 880.13 Project implementation.

(a) Under cooperative agreements with States or Indian tribes having an approved AML reclamation plan:

(1) States or Indian tribes will design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts.

(2) If OSM assistance is required, OSM will be reimbursed by the State or Indian tribe for all costs incurred, including OSM employees' time.

(b) In States and on Indian lands under the jurisdiction of tribes not having approved AML reclamation plans and on Federal lands, OSM has the authority to design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts. OSM, may, at its discretion, delegate authority to perform this work to States or Indian tribes or other Federal agencies.

[59 FR 52378, Oct. 17, 1994]

§ 880.14 Administration of contributions.

Financial contributions made by a State or Indian tribe, local authorities, or another Federal agency will be deposited in a trust fund in the Treasury of the United States. These contributions can be withdrawn by OSM and expended by the organization executing the project (OSM, a State, Indian tribe, or another Federal agency) pursuant to the cooperative agreement as necessary in performance of the project work. Withdrawals and expenditures from the trust fund will be made only for costs connected with the project. Any part of the money contributed by a State, Indian tribe, local authority, or another Federal agency for an individual project that remains unexpended upon the completion or termination of project will be returned to the State, Indian tribe, local authority, or other Federal agency.

[59 FR 52378, Oct. 17, 1994]

§ 880.15 Assistance by States or Indian tribes, local authorities, and private parties.

States Indian tribes, local authorities, or private parties, as may be appropriate in each particular project, and without cost or charge to project costs may:

(a) Provide assistance in planning and engineering the project, as requested by the organization executing the project;

(b) Furnish best available information, data, and maps on the location of the project and the location of water, sewer, and power lines within the project area, and maps or plats showing properties and lands on which releases, consents, or rights or interests in lands have been obtained;

(c) Obtain and deliver to OSM releases, proper consent or the necessary rights or interests in lands, and other documents required by OSM for approval of the project, and in form and substance satisfactory to OSM;

(d) Furnish a certification in form and substance satisfactory to OSM that the releases, consents, or the necessary rights or interests in lands, are from all the legal property owners within the project area;

(e) Agree 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;

(f) Grant to the Government the right to enter upon streets, roads, and other land owned or controlled by the State or the local authorities overlying or adjacent to the project fire area, and to conduct thereon the operations referred to in the cooperative agreement and project contract, and agree to hold the Government harmless from any claim for damage arising out of the project operations to property owned, possessed or controlled by the State or

local authorities in the vicinity of the project area;

(g) Furnish noncombustible materials suitable for implementing the planned fire control work. This material may be waste or borrow material obtained at the site or brought in from off-site.

(h) Maintain and perform maintenance work on the project as may be provided in the cooperative agreement;

(i) Agree not to mine or permit mining of coal or other minerals on property owned or controlled by the State or local authorities, if required by OSM, to assure the success of, or protection to, the project work and the control or extinguishment of the fire, and for such period of time as may be required by OSM; and

(j) If necessary, procure the enactment of State or local laws providing for the control and extinguishment of outcrop and underground fires in coal formations on State or privately owned lands and the cooperation of the State or local authorities in the work and the requisite authority to permit the States or local authorities to meet the obligations imposed by the regulations in this part of a cooperative agreement.

[51 FR 5493, Feb. 13, 1986. Redesignated at 59 FR 52377, Oct. 17, 1994, and amended at 59 FR 52378, Oct. 17, 1994]

§ 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 ''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 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

Sec.

881.1 Purpose and scope.
881.2 Definitions.
881.3 Qualification of projects.
881.4 Application of contribution.
881.5 Cooperative agreements.
881.6 Project contract.
881.7 Administration of contributions.
881.8 Withholding of payments.
881.9 Reports.
881.10 Obligations of States or local authorities.
881.11 Nondiscrimination.
881.12 Civil rights.

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, 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 coopertive 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 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 nonresident 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 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 required 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: 30 U.S.C. 1201 *et seq.*

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.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 882 and assigned it control number 1029–0057. This information is being collected to meet the mandate of section 408 of SMCRA, which allows the State or 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 or Indian tribe has sufficient programmatic capability to file liens to recover costs for reclaiming private lands. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67642, Nov. 14, 2008]

§ 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 from 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 must not be placed against the property of a surface owner 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 § 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.

[47 FR 28599, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008

§ 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.

PART 884—STATE RECLAMATION PLANS

Sec.
884.1 Scope.
884.5 Definitions.
884.11 State eligibility.
884.13 Content of proposed State reclamation plan.
884.14 State reclamation plan approval.
884.15 State reclamation plan amendments.
884.16 Suspension of plan.
884.17 Other uses by certified States and Indian tribes.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 28600, June 30, 1982, unless otherwise noted.

§ 884.1 Scope.

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

§ 884.5 Definitions.

As used in this part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67642, Nov. 14, 2008]

§ 884.11 State eligibility.

You, a State or Indian tribe, are eligible to submit a reclamation plan if you have eligible lands or water as defined in § 700.5 of this chapter within your jurisdiction. We may approve your proposed reclamation plan if you have an approved State regulatory program under section 503 of SMCRA, and you meet the other requirements of this chapter and SMCRA. The States of Tennessee and Missouri are exempt from the requirement for an approved State regulatory program by section 402(g)(8)(B) of SMCRA. The Navajo, Hopi, and Crow Indian tribes are exempt from the requirement for an approved regulatory program by section 405(k) of SMCRA.

[73 FR 67642, Nov. 14, 2008]

§ 884.13 Content of proposed State reclamation plan.

You must submit each proposed State reclamation plan to the Director in writing. A proposed plan for a certified State or Indian tribe must include the designation described in paragraph (a) below and a commitment to address eligible coal problems found or occurring after certification as required in §§ 875.13(a)(3) and 875.14(b) of this chapter. A proposed plan for an uncertified State or Indian tribe must include the following information.

(a) A designation by the Governor of the State or the governing authority of the Indian tribe of the agency authorized to administer the State or Tribal reclamation program and to receive and administer grants under part 885 or part 886 of this chapter.

(b) A legal opinion from the State Attorney General or 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.

[47 FR 28600, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008; 75 FR 60276, Sept. 29, 2010]

§ 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.

§ 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 § 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 § 884.16, reduction, suspension or termination of existing AML grants under § 886.18, or the withdrawal from consideration for approval of all grant applications submitted under § 886.15.

[51 FR 9444, Mar. 19, 1986]

§ 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 § 884.15.

(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.

[47 FR 28600, June 30, 1982, as amended at 51 FR 9444, Mar. 19, 1986]

§ 884.17 Other uses by certified States and Indian tribes.

(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 uses other than coal reclamation by certified States and Indian tribes may be submitted in accordance with § 885.15 of this chapter.

[47 FR 28600, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008]

PART 885—GRANTS FOR CERTIFIED STATES AND INDIAN TRIBES

Sec.

885.1 What does this part do?
885.5 Definitions.
885.10 Information collection.
885.11 Who is eligible for a grant?
885.12 What can I use grant funds for?
885.13 What are the maximum grant amounts?
885.14 How long is my grant?
885.15 How do I apply for a grant?
885.16 After OSM approves my grant, what responsibilities do I have?
885.17 How can my grant be amended?
885.18 What audit, accounting, and administrative requirements must I meet?
885.19 What happens to unused funds from my grant?

885.20 What must I report?
885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?
885.22 When and how can my grant be terminated for convenience?

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 73 FR 67642, Nov. 14, 2008, unless otherwise noted.

§ 885.1 What does this part do?

This part sets forth procedures for grants to you, a State or Indian tribe that has certified under § 875.13 of this chapter that all known coal reclamation problems in your State or on Indian lands within your jurisdiction have been addressed. OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) may be used if applicable.

§ 885.5 Definitions.

As used in this part—

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

§ 885.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements for all Title IV grants and assigned clearance number 1029–0059. This information is being collected to obtain an estimate from you, the certified State or Indian tribe, of the funds you believe necessary to implement your program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through your obligations of funds. Certified States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 885.11 Who is eligible for a grant?

You are eligible for grants under this part if:

(a) You are a State or Indian tribe with a reclamation plan approved under part 884 of this chapter; and

(b) You have certified under § 875.13 of this chapter that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

§ 885.12 What can I use grant funds for?

(a) For all awards under this part, you must use moneys for activities authorized in SMCRA and included in your approved reclamation plan or described in the grant application. In addition, you may use moneys granted under this part to administer your approved reclamation program.

(b) You may use grant funds as established for each type of funds you receive. You may use prior balance replacement funds as provided under § 872.31 of this chapter. You may use certified in lieu funds as provided under § 872.34 of this chapter. You may use any moneys which may be available to you from the Fund for noncoal reclamation as authorized under section 411 of SMCRA and part 875 of this chapter.

(c) You may use grant funds for any allowable cost as determined by the OMB cost principles in Circular A–87.

§ 885.13 What are the maximum grant amounts?

(a) You may apply at any time for a grant of any or all of the Title IV funds that are available to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under § 885.19 of this chapter.

(c) Funds for the current fiscal year are available for award after the annual fund distribution described in § 872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

§ 885.14 How long is my grant?

The performance period for your grant will be the time period you request in your grant application.

§ 885.15 How do I apply for a grant?

(a) You must use application forms and procedures specified by OSM.

(b) We award your grant as soon as practicable but no more than 30 days after we receive your complete application.

(c) If your application is not complete, we inform you as soon as practicable of the additional information we need to receive from you before we can process the award.

(d) You must agree to expend the funds of the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

§ 885.16 After OSM approves my grant, what responsibilities do I have?

(a) When we award your grant, we send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local organizations. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must ensure that any applicable laws, clearances, permits, or requirements are met before you expend funds for projects other than coal reclamation under part 874.

(e) If you conduct a coal reclamation project under part 874 of this chapter, you must not expend any funds until we have ensured that all necessary actions have been taken by you and us to ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits or requirements.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with Title IV grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not 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.

§ 885.17 How can my grant be amended?

(a) A grant amendment is a change of terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All requirements and procedures for grant amendments follow 43 CFR part 12.

(d) We must award your amended grant agreement within 20 days of receiving your request.

§ 885.18 What audit, accounting, and administrative requirements must I meet?

(a) You must comply with the audit requirements of the OMB Circular A–133.

(b) You must follow procedures governing grant accounting, payment, records, property, and management contained in 43 CFR part 12.

§ 885.19 What happens to unused funds from my grant?

All program grant funds are available until expended. If there are any unexpended funds after your grant is completed, we deobligate the funds when we close your grant. We make these unused funds available for re-award to the same certified State or Indian tribe

to which they were originally distributed. You may apply for unused funds whenever you choose to request them either in a new grant award or as an amendment to an existing open grant.

§ 885.20 What must I report?

(a) For each grant, you must annually report to us the performance and financial information that we request.

(b) Upon completion of each grant, you must report to us final performance and financial information that we request.

(c) You must use the AML inventory to maintain a current list of AML problems and to report annual reclamation accomplishments with grant funds.

(1) If you conduct reclamation projects, you must update the AML inventory for each reclamation project you complete as you complete it.

(2) We must approve any amendments to the AML inventory after December 20, 2006. We define ''amendment'' as any coal problems added to the AML inventory in a new or existing problem area.

§ 885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?

If you or your subgrantee materially fails to comply with an award, a reclamation plan, or a Federal statute or regulation, including statutes relating to nondiscrimination, we may take appropriate remedial actions. Enforcement actions and procedures must follow 43 CFR part12.

§ 885.22 When and how can my grant be terminated for convenience?

Either you or we may terminate the grant for convenience following the procedures in 43 CFR part12.

PART 886—RECLAMATION GRANTS FOR UNCERTIFIED STATES AND INDIAN TRIBES

Sec.

886.1 What does this partdo?
886.5 Definitions.
886.10 Information collection.
886.11 Who is eligible for a grant?
886.12 What can I use grant funds for?
886.13 What are the maximum grant amounts?
886.14 How long will my grant be?
886.15 How do I apply for a grant?
886.16 After OSM approves my grant, what responsibilities do I have?
886.17 How can my grant be amended?
886.18 What audit and administrative requirements must I meet?
886.19 How must I account for grant funds?
886.20 What happens to unused funds from my grant?
886.21 What must I report?
886.22 What records must I maintain?
886.23 What actions can OSM take if I do not comply with the terms of my grant?
886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?
886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?
886.26 When and how can my grant be terminated for convenience?
886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 73 FR 67644, Nov. 14, 2008, unless otherwise noted.

§ 886.1 What does this partdo?

This partsets forth procedures for grants to you, an uncertified State or Indian tribe, to reclaim eligible lands and water and conduct other activities necessary to carry out your approved reclamation plan. OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) may be used as applicable.

§ 886.5 Definitions.

As used in this Part—

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part884 of this chapter.

§ 886.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part886, and Forms OSM–47, OSM–49, and OSM–51, and assigned clearance

number 1029–0059. This information is being collected to obtain an estimate from you the uncertified State or Indian tribe of the funds you believe necessary to implement your reclamation program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through State and Tribal obligations of funds. Uncertified States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 886.11 Who is eligible for a grant?

You are eligible for grants under this partif:

(a) You are a State or Indian tribe with a reclamation plan approved under part884 of this chapter; and

(b) You have not certified that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

§ 886.12 What can I use grant funds for?

(a) You must use moneys granted under this partto administer your approved reclamation program and to carry out the specific reclamation and other activities authorized in SMCRA as included in your reclamation plan or your grant application.

(b) We award grants for reclamation of eligible lands and water in accordance with sections 404 and 409 of SMCRA and §§ 874.12 and 875.12 of this chapter, and in accordance with the priorities stated in section 403 of SMCRA and § 874.13 of this chapter.

(c) You may use grant funds as established in this chapter for each type of funds you receive in your AML grant. You may use State share funds as provided in § 872.16 of this chapter; Tribal share funds as in § 872.19 of this chapter; historic coal funds as in § 872.23 of this chapter; minimum program make up funds as in § 872.28 of this chapter; prior balance replacement funds as in § 872.31 of this chapter; and Federal expense funds as in § 872.25 of this chapter and in the appropriation.

(d) You may use grant funds for acquisition of land or interests in land, and any mineral or water rights associated with the land, for up to 90 percent of the costs.

(e) You may use grant funds only for costs which are allowable as determined by OMB cost principles in Circular A–87.

§ 886.13 What are the maximum grant amounts?

(a) You may apply at any time for a grant of any or all of the program funds that are available to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution, less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under § 886.20 of this chapter.

(c) Funds for the current fiscal year are available for award after the annual fund distribution described in § 872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

§ 886.14 How long will my grant be?

(a) We approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of SMCRA and the approved reclamation plan.

(b) The grant period is normally for 3 years.

(c) We may extend the grant period at your request. We normally approve one extension for up to one additional year.

(d) The grant period for funding your administrative costs does not normally exceed the first year of the grant.

(e) We award grants containing State or Tribal share funds distributed to you in Fiscal Years 2008, 2009, or 2010 for a budget period of five or three years at your request.

§ 886.15 How do I apply for a grant?

(a) You must use application forms and procedures specified by OSM.

(b) We approve or disapprove your grant application within 60 days of receipt.

(c) If we do not approve your application, we inform you in writing of the reasons for disapproval. We may propose modifications if appropriate. You may resubmit the application or appropriate revised portions of the application. We process the revised application as an original application.

(d) You must agree to carry out activities funded by the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

(e) We do not require complete copies of plans and specifications for projects either before the grant is approved or at the start of the project. However, after the start of the project, we may review your plans and specifications at your office, the project site, or any other appropriate site.

§ 886.16 After OSM approves my grant, what responsibilities do I have?

(a) When we award your grant, we send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local agencies. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must not expend any construction funds until you receive a written authorization to proceed with reclamation on the individual project. Our Authorization to Proceed ensures that both you and we have taken all actions necessary to ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits, or requirements.

(e) You must enter coal problems in the AML inventory before you expend funds on design or construction activities for a site. We must approve any amendments to the AML inventory made after December 20, 2006. For purposes of this section, we define ''amendment'' as any coal problem added to the AML inventory in a new or existing problem area and any Priority 3 coal problem in the AML inventory that is elevated to either Priority 1 or Priority 2 status.

(1) For emergency projects conducted under section 410 of SMCRA, our finding that an emergency condition exists constitutes our approval for the abandoned mine lands problem to be entered into the AML inventory.

(2) We must approve amendments to the AML inventory for non-emergency coal problems before you, the State or Indian tribe, begin project development or design or use funds for construction activities. In projects where development and design is minimal, this approval may occur during the Authorization to Proceed process.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not 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.

§ 886.17 How can my grant be amended?

(a) A grant amendment is a change of the terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All procedures for grant amendments follow 43 CFR part12.

(d) We must approve or disapprove the amendment within 30 days of receiving your request.

§ 886.18 What audit and administrative requirements must I meet?

(a) You must comply with the audit requirements of the OMB Circular A–133.

(b) You must follow administrative procedures governing grant payments, property, and related requirements contained in 43 CFR part12.

§ 886.19 How must I account for grant funds?

You must do all of the following in accordance with the requirements of 43 CFR part12:

(a) Accurately and timely account for grant funds;

(b) Adequately safeguard all funds, property, and other assets and assure that they are used solely for authorized purposes;

(c) Provide a comparison of actual amounts spent with budgeted amounts for each grant;

(d) Request any cash advances as closely as possible to the actual time of the disbursement; and

(e) Design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 886.20 What happens to unused funds from my grant?

(a) If there are any unexpended funds after your grant is completed, we deobligate the funds when we close your grant. We treat unused funds as follows:

(1) We transfer any State share funds under § 872.14 of this chapter or Tribal share funds under § 872.17 that were not expended within three years of the date they were awarded in a grant, except five years for funds awarded in Fiscal Years 2008, 2009, and 2010, to historic coal funds, § 872.21 of this chapter. We distribute any funds transferred to historic coal in the next annual distribution in the same way as historic coal funds from fee collections during that fiscal year.

(2) We hold any unused Federal expense funds under § 872.24 of this chapter for distribution to any State or Indian tribe as needed for the activity for which the funds were appropriated.

(3) We make unused funds of all other types available for re-award to the same State or Indian tribe to which they were originally distributed. This includes historic coal funds under § 872.21 of this chapter, minimum program make up funds under § 872.26 of this chapter, and prior balance replacement funds under § 872.29 of this chapter.

(b) If you have any State share funds or Tribal share funds that were distributed to you in an annual distribution under § 872.15 or § 872.18 of this chapter but that were not awarded to you in grant within 3 years of the date they were distributed, or 5 years for funds distributed in Fiscal Years 2008, 2009, and 2010, we transfer the unawarded funds to the historic coal fund under § 872.21 of this chapter and distribute them in the next annual distribution.

§ 886.21 What must I report?

(a) For each grant, you must annually report to us the performance and financial information that we specify.

(b) Upon completion of each grant, you must submit to us final performance, financial, and property reports, and any other information that we specify.

(c) When you complete each reclamation project, you must update the AML inventory.

§ 886.22 What records must I maintain?

You must maintain complete records in accordance with 43 CFR part12. Your records must support the information you reported to us. This includes, but is not limited to, books, documents, maps, and other evidence. Accounting records must document procedures and practices sufficient to verify:

(a) The amount and use of all Title IV funds received; and

(b) The total direct and indirect costs of the reclamation program for which you received the grant.

§ 886.23 What actions can OSM take if I do not comply with the terms of my grant?

(a) If you, or your subgrantee, fail to comply with the terms of your grant, we may take one or more of the following remedial actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending your correction of the deficiency;

(2) Disallow (that is, deny both use of Federal funds and matching credit for non-Federal funds) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly reduce, suspend or terminate the current award for your program;

(4) Withhold further grant awards for the program; or

(5) Take other remedies that may be legally available.

(b) If we terminate your State regulatory administration and enforcement grant, provided under part735 of this chapter, for failure to implement, enforce, or maintain an approved State regulatory program or any part thereof, we will terminate the grant awarded under this Part. This paragraph does not apply to the States of Missouri or Tennessee under section 402(g)(8)(B) of SMCRA, or to the Navajo, Hopi and Crow Indian tribes under section 405(k) of SMCRA.

(c) If you fail to enforce the financial interest provisions of part705 of this chapter, we will terminate the grant.

(d) If you fail to submit reports required by this part or part 705 of this chapter, we take appropriate remedial actions. We may terminate the grant.

(e) If you fail to submit a reclamation plan amendment as required by § 884.15 of this chapter, we may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

(f) If you are not in compliance with all Federal statutes relating to nondiscrimination, including but not limited to the following, we will terminate the grant:

(1) Title VI of the Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 252 (42 U.S.C. 2000d *et seq.*). ''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.

(2) 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.

(3) Section 504 of the Rehabilitation Act of 1973, Public Law 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.''

§ 886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?

We will use the following procedures to reduce, suspend, or terminate your grant:

(a) We must give you at least 30 days written notice of intent to reduce, suspend, or terminate a grant. An OSM official authorized to approve your grant must sign our notice of intent. We must send this notice by certified mail, return receipt requested. Our notice must include the reasons for the proposed action and the proposed effective date of the action.

(b) We must give you opportunity for consultation and remedial action before we reduce or terminate a grant.

(c) We must notify you in writing of the termination, suspension, or reduction of the grant. The notice must be signed by the authorized approving official and sent by certified mail, return receipt requested.

(d) Upon termination, you must refund to us that remaining portion of the grant money not encumbered. However, you may retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(e) You must not make any new commitments of grant funds after receiving notification of our intent to terminate the grant without our approval.

(f) We may allow termination costs as determined by applicable Federal cost principles listed in OMB Circular A–87.

§ 886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?

(a) Within 30 days of our decision to reduce, suspend, or terminate a grant, you may appeal the decision to the Director.

(1) You must include in your appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

(2) The Director must decide the appeal within 30 days of receipt.

(b) Within 30 days of a decision by the Director to reduce, suspend, or terminate a grant, you may appeal the decision to the Department of the Interior's Office of Hearings and Appeals. You must include in the appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

§ 886.26 When and how can my grant be terminated for convenience?

Either you or we may terminate or reduce a grant if both parties agree that continuing the program would not produce benefits worth the additional costs. We will handle a termination for convenience as an amendment to the grant to be approved by the OSM official authorized to approve your grant.

§ 886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?

(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations arising from past mining practices and begin reclamation of other areas determined to have high priority on such lands.

(b) The Director is authorized to receive proposals from Indian tribes for projects that should be carried out on Indian lands subject to this section and to carry out these projects under parts 872 through 882 of this chapter.

(c) For reclamation activities carried out under this section on Indian lands, the Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian lands.

(d) 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 Federal expense funds under § 872.25 of this chapter.

(e) 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.

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

Sec.

887.1 Scope.
887.5 Definitions.
887.10 Information collection.
887.11 Eligibility for grants.
887.12 Coverage and amount of grants.
887.13 Grant period.
887.15 Grant administration requirements and procedures.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 51 FR 5493, Feb. 13, 1986, unless otherwise noted.

§ 887.1 Scope.

This part sets forth the procedures for grants to you, a State or Indian tribe with an approved reclamation plan to establish, administer, and operate a self-sustaining individual State or Indian tribe administered program to insure private property against damages caused by land subsidence resulting from underground coal mining.

[73 FR 67647, Nov. 14, 2008]

§ 887.5 Definitions.

As used in this part—

Establishment—means either the development of a subsidence insurance program or the administration or operation of a subsidence insurance program.

Private property—means any or all of the following: dwellings and improvements, commercial and industrial structures, utilities, underground structures such as sewers, pipes, wells and septic systems, sidewalks and driveways, and land.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

Self-sustaining means maintaining an insurance rate structure which is designed to be actuarially sound. Self-sustaining requires that State or Indian tribal subsidence insurance programs provide for recovery of payments made in settlement for damages from any party responsible for the damages under the law of the State or Indian tribe. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining must not preclude the use of funds from other non-Federal sources.

State or Indian tribe administered means administered either directly by a State or Indian tribe or for a State or Indian tribe through a State or Indian tribal authorized commission, board, contractor such as an insurance company, or other entity subject to State or Indian tribal direction.

[51 FR 5493, Feb. 13, 1986, as amended at 73 FR 67647, Nov. 14, 2008]

§ 887.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the OMB has approved the information collection requirements of part 887 and assigned it control number 1029–0107. This information is being collected to support State and Indian tribal grant requests for moneys for the establishment, administration, and operation of self-sustaining State or Indian tribal administered subsidence insurance programs. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67647, Nov. 14, 2008]

§ 887.11 Eligibility for grants.

You are eligible for grants under this part if you are a State or Indian tribe with a reclamation plan approved under part 884 of this chapter. If you are uncertified, you must have State share funds available under § 872.14 of this chapter or Tribal share funds available under § 872.17 of this chapter. If you have certified completion of coal reclamation under section 411(a) of SMCRA, you must have certified in lieu funds available under § 872.32 of this chapter, or prior balance replacement funds available under § 872.29 of this chapter if the State legislature or Tribal council has established this purpose.

[73 FR 67647, Nov. 14, 2008]

§ 887.12 Coverage and amount of grants.

(a) You may use moneys granted under this part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover your costs for services and materials according to OMB cost principles, Circular A–87. You may use eligible grant moneys to cover capitalization requirements and initial reserve requirements mandated by applicable State or Tribal law provided use of such moneys is consistent with the 43 CFR part 12.

(b) You must submit a grant application under the procedures of part 885 of this chapter for certified States and Indian tribes or part 886 of this chapter for uncertified States or Indian tribes. Your application must include the following:

(1) A narrative statement describing how the subsidence insurance program is ''State or Indian tribe administered''; and

(2) A narrative statement describing how the funds requested will achieve a self-sustaining individual State or Indian tribe administered program to insure private property against subsidence resulting from underground coal mining.

(c) Grants awarded to you under this part cannot exceed a cumulative total over the lifetime of the program of $3 million.

(d) You may not use grant moneys from the Fund for lands that are ineligible for reclamation funding under Title IV of SMCRA.

(e) Insurance premiums must be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with 43 CFR part 12.

[73 FR 67647, Nov. 14, 2008]

§ 887.13 Grant period.

The grant funding period must not exceed 8 years from the time we approve the grant. You must return any unexpended funds remaining at the end of any grant period to us according to 43 CFR part 12.

[73 FR 67647, Nov. 14, 2008]

§ 887.15 Grant administration requirements and procedures.

The requirements and procedures for grant administration set forth in part 885 of this chapter for reclamation grants to certified States and Indian tribes or in part 886 of this chapter for reclamation grants to uncertified States and Indian tribes must be used for subsidence insurance funds in grants.

[73 FR 67647, Nov. 14, 2008]

SUBCHAPTER S [RESERVED]