

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Parts 870, 886, 887, and 888**

RIN No. 1029-AB72

**Abandoned Mine Reclamation Grant Procedures**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule.

**SUMMARY:** These regulations incorporate new grant procedures implemented by OSM and make editorial changes to ensure consistency with the statutory changes to Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Public Law 95-87.

**EFFECTIVE DATE:** March 24, 1995.

**FOR FURTHER INFORMATION CONTACT:** Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: 202-208-2949.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Final Rules and Disposition of Comments
- III. Procedural Matters

**I. Background****A. Summary of the Abandoned Mine Land (AML) Program**

The AML Program was established by SMCRA, Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, in response to concern over extensive environmental damage caused by past coal mining activities. In effect, the Abandoned Mine Reclamation Fund (Fund) and the program it supports is the coal industry's equivalent to the "Superfund" administered by the Environmental Protection Agency to address hazardous waste discharges.

The eligibility requirements for reclamation of abandoned mine lands are contained in Section 404 of SMCRA. Funding of reclamation projects is subject to a priority schedule. For example, "Priority 1" projects concern those that involve the protection of public health, safety, general welfare, and property from extreme danger of the adverse effects of coal mining practices. "Priority 3" projects, on the other hand, concern environmental problems associated with past coal mining practices that do not necessarily constitute a public health or safety threat or affect the general welfare.

The Fund, administered by the Secretary of the Interior through OSM, is financed by a reclamation fee

assessment on every ton of mined coal at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal, and 10 cents per ton for lignite. Expenditures from the Fund are subject to appropriation by Congress.

The Fund is divided into the State/Indian tribe and Federal shares with each State or Indian tribe under a federally approved reclamation program entitled to fifty percent of the reclamation fees collected from coal operations within the State or respective Indian lands. Annually, these States/Indian tribes receive grants to carry out reclamation projects under their AML programs. States are authorized to use up to \$3 million of their State-share funds to establish State coal mine subsidence insurance programs, and are also authorized to deposit up to ten percent of their annual grants into special interest-bearing State trust accounts available for future reclamation purposes or for acid mine drainage reclamation projects.

The Federal expenses share of the Fund is allocated among a number of programs such as Federal emergency projects (involving sudden and life-threatening situations that demand immediate attention), high-priority reclamation projects in States and Indian lands without federally approved reclamation programs (referred to as "nonprogram" States/Indian tribes), and the Small Operator Assistance Program, which provides financial assistance to small coal operators to help defray certain costs associated with the surface coal mining permitting process. At present, 23 States and three Indian tribes have OSM approved abandoned mine reclamation programs.

**B. Proposed Rules**

OSM published proposed rules at 58 FR 59334-59342 (November 8, 1993) concerning abandoned mine reclamation grant procedures and requested comments from the public. During the comment period on the proposed rules, OSM received comments from a variety of sources.

Pursuant to Executive Order 12866, every Federal agency is required within applicable statutory limits to select regulatory goals that maximize benefits to society and to select the most effective means to achieve these goals. To this end OSM has received comments and recommendations from the public and representatives of coal mining States/Indian tribes.

All comments received during the comment period were considered in this rulemaking process, and all substantive comments received are addressed in the

following preamble. All comments received are available for inspection in the OSM Administrative Record, room 660, 800 North Capitol Street, NW, Washington, D.C. 20001.

**C. Overview of Changes to Abandoned Mine Land Grant Regulations**

Over the years, Congress has made several amendments to the provisions in Title IV of SMCRA. These amendments have been, or are in the process of being, implemented by OSM. In addition, the Department has adopted the governmentwide Grants Management Common Rule (43 CFR part 12; subpart C). Due to these changes, certain regulatory references are now outdated or refer to statutory provisions that no longer exist. Therefore, in this rulemaking OSM is editing the AML regulations in 30 CFR chapter VII, subchapter R, to ensure that they will be consistent with agency practice and all past amendments to Title IV of SMCRA. The specific changes proposed to the AML rules are set forth below.

**II. Final Rules and Disposition of Comments****Part 870-Abandoned Mine Reclamation Fund-Fee Collection and Coal Production Reporting**

Section 870.5 is revised to include Indian tribes in the definition of "agency" to reflect the OSM has approved Abandoned Mine Reclamation programs for three Indian tribes: the Crow, Hopi, and Navajo. See Section 405(k) of Pub. L. No. 100-71, 101 Stat. 416 (1987). No comments were received on this section which is adopted as proposed.

**Part 886-State Reclamation Grants**

Section 886.1 is revised by adding the term "Indian tribes" and deleting specific reference to "State reclamation plan[s]" to reflect that OSM has approved abandoned mine reclamation programs for three Indian tribes: the Crow, Hopi, and Navajo. In every instance in this document where Indian tribe has been inserted, the purpose is to add clarity and avoid confusion by reflecting the fact that OSM approval has been extended to Indian tribal programs as well as State programs. See Pub. L. No. 100-71, 101 Stat. 416 (1987). No comments were received on this section which is therefore adopted as proposed.

OSM also amended § 886.3 by making certain editorial changes. Subsection (b) has been deleted and the subsection designation for subsection (a) removed. The word "allocated" has also been replaced with "distributed annually."