

This revision clarifies that AML grant funds as "distributed" to States and Indian tribes. The previous use of the word "allocated" was, in the context used, inappropriate. Allocation means the administrative identification in the records of OSM of monies in the Fund for a specific purpose, e.g. identification of monies for exclusive use by a State/Indian tribe, whereas "distribution" is the process by which OSM makes those monies available to States/Indian tribes after the monies are appropriated from the AML Fund by Congress. Throughout this final rule, editorial changes have been made to clarify this terminology. In addition, the word "annually" is added to reflect the current procedure that exists for AML grant distribution. States/Indian tribes with approved AML programs are eligible to submit AML grant requests on an annual basis.

Subsection 886.3(b) has been deleted due to the legislative changes effectuated by the 1990 amendments to Title IV of SMCRA. See the Abandoned Mine Reclamation Act (AMRA) of 1990, Pub. L. 101-508 (November 5, 1990). All funds are now allocated for a specific purpose (see 30 U.S.C. 1232(g)). Accordingly, the reference to 30 CFR § 886.3 concerning "remaining funds" is no longer relevant.

No comments concerning this section were received from the public, thus, this section is adopted as proposed.

Section 886.10 addresses information collection requirements and the appropriate OMB clearance number. OSM revised and amended this section by updating the data contained in the section and including the estimated reporting burden per response for complying with the information collection requirements. The revision also provides OSM and OMB addresses where comments regarding the information collection requirements may be sent. No comments were received on this section which is adopted as proposed.

Section 886.11 is amended to reflect that OSM has approved Abandoned Mine Reclamation plans for three Indian tribes: the Crow, Hopi, and Navajo. No comments were received on this section, which is thus adopted as proposed.

Section 886.12(a) is amended by removing the word "State." This amendment would reflect that Tribal programs have been approved by OSM.

Section 886.12(b), which outlines the permissible uses for grant moneys under this part, is amended by revising the subsection to reflect specific changes made by the 1990 amendments to Title IV of SMCRA. See Pub. L. No. 101-508.

Rather than listing certain reclamation objectives, OSM is referencing specific

statutory and regulatory provisions that detail eligibility requirements. This change avoids confusion and provides clearer direction for the States/Indian tribes.

One commenter observed that the last sentence of subsection (b) appears to require the use of fuels other than petroleum or natural gas where public facility projects are constructed with abandoned mine land grant funds. This commenter was unclear as to why such a requirement has been included, and further felt that this restriction was inappropriate in the context of these regulations.

OSM responds that this provision stems from Executive Order 12185 which requires, to the extent technologically and economically feasible, that public facilities planned, constructed or modified in whole or part with Federal funds (e.g., abandoned mine land grant funds) should utilize fuel other than petroleum or natural gas. This provision has been in the regulations since 1982. If a State/Indian tribe determines that a public facility project incorporating such provisions is not technologically or economically feasible, then compliance with this requirement would not be required.

Subsection 886.13(a) is revised by deleting any reference to administrative grants as being separated grants in and of themselves. This change reflects the current OSM policy of awarding all AML funds through a single grant. Administrative costs in this grant would no longer require a second grant, but would cover only the first year of the grant.

Two commenters expressed concern on behalf of their members regarding the requirement to begin the 12-month administrative period at the beginning of the grant since it may not coincide with the grantee's fiscal year. The proposed rule would require grantees to shift their construction grant period to coincide with the fiscal year, thereby losing much of the favorable construction season. The commenter suggests that grantees be allowed to assign the 12-month performance period for the administrative portion of a grant to any 12-month period within the first 18 months of a grant. This additional flexibility would allow the grantee's administrative cost period to coincide with its fiscal year, while the construction portion of a grant can be scheduled to coincide with the construction season.

OSM has not accepted this comment and does not believe that a change to the proposed rule language is required since sufficient flexibility exists under the current system and the proposed rule as

evidenced by several States that already have made determinations to adjust their administrative period to coincide with the start of their fiscal year.

Section 886.13(b) is also revised in order to implement changes made by the 1990 amendments to SMCRA. These statutory amendments deleted a reference to "impact assistance funding" in Section 402(g) of SMCRA (30 U.S.C. § 1232), and moved these reclamation objectives to the non-coal provisions in new SMCRA Section 411 (30 U.S.C. § 1240(a)). A similar change has been made in these regulations. Additionally, and to avoid confusion, OSM has replaced the specific reference to Sections 403 and 409 (30 U.S.C. §§ 1233 and 1239), of SMCRA with a general reference to SMCRA.

OSM also has deleted paragraphs (b)(2) and (b)(3) of § 886.13 which refer to specific AML projects. Under the revised AML grant procedures, project specific information would be, in part, in Abandoned Mine Land Inventory System and, in part, submitted at the time of project activation. This change will decrease certain administration costs of States/Indian tribes, thereby allowing more AML funds to be used for specific AML reclamation purposes.

Two commenters suggested that open-ended grants be allowed, in lieu of the current 3-year limitation, so as to accommodate longer performance periods.

OSM accepts the comment to provide flexibility in the grant period. This change is being made to accommodate longer performance periods where a need is demonstrated by a State/Indian tribe. Since no grant period is specified in the statute, OSM believes that it has the requisite authority under Subsection 413(a) of SMCRA to alter the current 3-year grant period. OSM acknowledges, however, that longer grant periods may pose certain processing and fiscal problems. Accordingly, OSM is planning to examine this concept, developing proposed specific procedures for an open-ended grant program and testing the procedures by means of selected State programs before making a final policy decision.

The existing § 886.14 includes a reference to Section 405(f) of SMCRA, relating to project information required from applicants. Since § 886.14 is revised to relate solely to budget information, submission of information relating to Section 405(f) now is discussed in the preamble to § 886.16.

Section 886.14 is revised to reflect that OSM will not require annual budget estimates. This clarifies that States/Indian tribes should no longer submit site specific information to OSM as part