animal assay, or, in the absence of experimental data, on the basis of its predicted toxicity, is subject to the requirements of substances listed in §261.33(e), including the small quantity exclusion defined in §261.5.

(5) A mixture that does not meet the criteria for an acute hazardous waste is subject to the requirements of substances listed in paragraph (f) of this section, including the small quantity exclusion defined in § 261.5. This paragraph does not apply to mixtures containing substances listed in §261.33(e) because they have been found to be reactive or fatal to humans in low doses. Mixtures containing such substances will continue to be acutely hazardous, and will be subject to the requirements of substances listed in §261.33(e).

(6) If the ingredients of a mixture are unknown to, and unobtainable by, the generator because of trade secrets or otherwise, such that the predicted toxicity cannot be calculated, the generator may either conduct an experimental animal assay on the mixture to determine its toxicity and submit such information to the Agency following the procedures described in §§ 260.20 and 260.22 of this chapter, or he may treat the mixture as if it were an acute hazardous waste.

[FR Doc. 86-3045 Filed 2-12-86; 8:45 am]
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federal register

Thursday
February 13, 1986

Part III

Department of Education

34 CFR Part 674

National Direct Student Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 674

National Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the National Direct Student Loan (NDSL) Program. These proposed regulations are designed to reduce the high number of defaulted loans under the NDSL Program and the unacceptably high default rate of certain participating institutions of higher education by amending the current funding procedures. The Secretary proposes these regulations to encourage institutions to improve the management of their NDSL Programs. Institutions which reduce their default rate by increasing repayments will better preserve the NDSL fund as a revolving fund, and will increase the funds available for loans to future borrowers.

DATES: Comments must be received by March 31, 1986.

ADDRESS: All comments concerning these proposed regulations should be addressed to Ms. Margaret O. Henry, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW. (Room 4018, ROB–3), Washington, DC 20202. Telephone (202) 245–9720.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW. (Room 4018, ROB–3), Washington, DC 20202. Telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION:

Background

Under the National Direct Student Loan Program, Title IV–E of the Higher Education Act of 1965, as amended, institutions of higher education may receive Federal funds to make loans to students. The current regulations governing NDSL funding procedures provide that a participating institution may not receive a Federal capital contribution (FCC) under the program if its NDSL default rate exceeds 25 percent. The current regulations reduce the FCC provided to an institution with a default rate between 10 percent and 25 percent. The Secretary proposes to revise these procedures in an effort to reduce the high number of defaulted loans under the NDSL Program and the unacceptably high default rate of certain participating institutions of higher education.

Summary of Major Changes

These proposed regulations would change the impact of an institution's default rate on its receipt of Federal capital contribution (FCC), would amend the definition of "default" or "in default," and would amend the appeal process as part of the application review process.

A. Definition of "default" or "in default": Section 674.2

Current regulations provide that a borrower who fails to make an installment payment when due, or to comply with other terms of the promissory note, is regarded as in default on a loan unless the institution reasonably concludes, from written statement(s) from the borrower, that he or she intends to repay the loan. A borrower who reaffirms that intention in this way is thereafter eligible to receive further Title IV assistance, and when computing its default rate, the institution can exclude that borrower's loan from the amount of its loans in default. The institution can also exclude a previously-defaulting borrower's loan from the amount of its loans in default if that borrower executes and complies with a new repayment agreement.

The Secretary intends to continue the existing option for curing a default by the execution of a new repayment agreement, but is proposing to revise this rule for those borrowers who have defaulted and have not executed a new agreement. Under this proposed rule, an institution can exclude from the category of loans "in default" only those past-due loans on which the borrowers do not merely profess their intention to repay, but evidence that promise by making realistic efforts to cure their past defaults. The Secretary considers those borrowers who failed to make required payments in the past but are now making payments currently due and additional payments large enough to continually reduce their arrearages to be demonstrating a serious intention to honor their loan obligations. The Secretary believes that these borrowers deserve to be treated as no longer in default and therefore proposes to amend the rule to exclude from the category of loans in default only the loans of these borrowers who demonstrate serious attempts to cure past defaults by making satisfactory payments to reduce arrearages.

Under this proposal, a borrower previously in default will be considered to be no longer in default while the following conditions are satisfied. First, the borrower has stated in writing his or her intention to repay the loan. Second, the borrower has made a payment or payments sufficient to reduce satisfactorily the amount in arrears: if any amount was past due six months before the date of the payment in question, that payment, together with any intervening payments, must reduce the amount in arrears when the payment in question is made to less than the amount that was past due six months earlier. If no amount was past due six months before the payment in question, that payment, with any others made after the default, must reduce the amount in arrears to less than the amount of the first missed payment within that six month period. Third, if the determination of loan status is made in a month after the borrower made a satisfactory payment described here, the borrower is not in default if he or she has resumed payments in accordance with the repayment agreement most recently executed with the institution, and has included in those regularly-scheduled payments additional amounts necessary to continue to reduce the amount in arrears.

The following examples illustrate the effect of the proposed rule:

Case 1. A borrower owes $3,000, and is required to make monthly payments of $50. The borrower misses payments due on January 1 and each month thereafter until July 5, when he makes a $200 payment, accompanied by a written promise to repay the loan. The determination of the borrower's status in this situation is governed by the second condition: the borrower went into default on January 2, and continued in default through July 5. Six months before the July 5 payment, the borrower was $50 in arrears. Thereafter, the borrower missed six payments, and the total amount past due on July 5 (excluding interest and late charges) was therefore $350. The borrower's July 5 payment of $200 does not reduce the amount past due to less than that past due six months earlier, and the borrower is still in default.

Case 2. A borrower owes $4,000, and is required to make monthly payments of $100. The borrower misses payments due on September 1 and October 1. On October 30, the borrower makes a payment of $100. The borrower misses the payment due on November 1, and on November 15 makes a payment of $150 and reaffirms her intent to repay the loan. The determination of the status of this borrower is governed by the first and second conditions described here. The borrower is in default on September 2 and continues in default through October 30. The borrower is $200 in arrears on October 30, and her $100 payment does not suffice to cure the default because it is not accompanied by a written reaffirmation. Even if it were, it does not reduce the amount then in arrears to *less* than the amount of the first payment ($100) missed within a six-month period ending on the date of the payment in question. However, the borrower cures her default on November 15 because she then makes a written promise to repay together with a payment which, with the other payment she made after her default, reduced the $200 in arrears on that date (the sum of the amount still in arrears, $100, on November 1, and the regularly-scheduled payment of $100 due November 1) to $50, an amount less than the amont of the first missed payment ($100) during the six-month period ending on November 15.

Case 3. The borrower in Case 2 is required under her repayment schedule to make her payment on the first day of the month. On December 1, when her past due amount (excluding interest and late charges) is still $50, the borrower pays $100; on January 1, she pays $110, and on February 1, another $100. The determination of the borrower's status in Case 3 is governed by the third condition. The borrower, as explained in Case 2, was no longer in default on November 15. However, although she makes the required payment on December 1, that payment does not reduce the amount in arrears, which remains $50. The borrower therefore remains in default through December 31; on January 1, her $110 payment not only satisfies the amount then due under her repayment agreement ($100), but reduces the amount of principal in arrears from $50 to $40. The borrower is therefore not in default during the month of January. She lapses back into default status on February 1, however, because her $100 payment on that date, while satisfying the amount due under the repayment agreement, does not further reduce the principal amount in arrears on her account, which remains $40.

B. Default Rate Penalty: Section 674.6a

Under the current regulations, any institution with a default rate in excess of 25 percent is ineligible to receive FCC, and institutions with default rates greater than 10 percent but not more than 25 percent may receive a reduced FCC allocation. Since the implementation of this default rate penalty, the median default rate for those institutions that participate in the NDSL program has declined from 9.56% as of June 30, 1980, to 8.96% as of June 30, 1984. For several reasons, the Secretary concludes that it is reasonable to require a continued reduction in the default rates which disqualify an institution from receiving full, or any additional, FCC it requests.

It is important to emphasize that the term default rate as used in these regulations has always been, and continues to be, a measurement of several factors over which the institution has control, a fact at times overlooked or misunderstood by commenters in the past. First, the term includes the amount of loans which entered default and remained in default for at least 120 days. Available information regarding the gradual nature of the decline in default rates suggests that continued improvement in collection efforts can yield a continuing reduction in the number of accounts which remain in default for 120 days, or a continuing increase in the number of accounts on which borrowers who were in default resume payments. Second, loans which the institution assigns to the Department are excluded from the measurement of its default rate. Unlike the first factor, this second is entirely within the control of the institution; the institution can assign any loan which has been in default for at least two years to the Department if the institution has exercised due diligence in attempting to collect that loan. Whether or not an institution succeeds in reducing its default rate by improving its collection activities, it can still reduce that default rate under these regulations by assigning these uncollectible loans to the Department.

There is no reasonable basis for providing additional FCC to an institution which is neither successful in collecting nor willing to relinquish to the Department the accounts which remain uncollectible despite responsible collection efforts. Therefore, in an effort to continue to lower the NDSL default rate, the Secretary proposes to modify the default rate penalty beginning with the 1986–87 award year, so that institutions with a default rate in excess of 20 percent would be ineligible to receive an FCC allocation, institutions with a default rate over 7.5 percent but not in excess of 20 percent may receive a reduced FCC allocation, and institutions with a default rate equal to or less than 7.5 percent may receive a full FCC allocation. The Secretary intends to issue proposed rules in the near future which may further modify the calculation and effect of the default rate on allocations of FCC; these rules will be proposed for the 1987–88 and subsequent award years.

The Secretary determines the amount of new FCC for an institution by subtracting from its conditionally guaranteed level of expenditure both its projected collections and its reimbursements for Direct loan cancellations received in the base year. The difference obtained by that subtraction together with an institution's State and National fair share increase would be multiplied by 90 percent to determine its FCC.

In projecting an institution's collections, the Secretary would consider its default rate. As used here, this term excludes all defaulted loans assigned to and accepted by the Department of Education (ED) through the base year for that application, those defaulted loans referred to and accepted by ED as of September 15, 1979, and those loans for borrowers whose accounts are past due but not in default. As an example, for the 1986–87 award year, if the default rate of an institution is 7.5 percent or less, its collections would be projected by multiplying the institution's actual base year collections by 121 percent. (One hundred and twenty-one percent is used because the Secretary continues to set the standard of a 10 percent per year increase in collections in both the current year and the award year. A 10 percent collection increase over a two year period equals 121 percent of base year collections.) If an institution's default rate is greater than 7.5 percent but not more than 20 percent, its collections would be projected by multiplying the institution's actual base year collections by 121 percent, plus the additional amount which the institution would have collected if its base year default rate were 7.5 percent.

In order to calculate the additional amount that an institution would have collected if its default rate were only 7.5 percent (that is, the "excess overdue amount"), the Secretary would determine the amount of defaulted loans that an institution would hold if its default rate was 7.5 percent. This is done by multiplying the total amount of its matured loans by 7.5 percent. Second, the Secretary would subtract 7.5 percent of the matured loans from the principal amount outstanding on defaulted loans that the institution reports on its Fiscal Operations Report (FISAP). Third, this difference would be divided by the principal amount outstanding on defaulted loans that the institution reports on its FISAP. Fourth, the principal amount past due on defaulted loans would be multiplied by the percent resulting from the division in step three to determine the excess overdue amount.

As an example, if an institution's NDSL fund has:

• Matured loans totalling $616,480;

• Principal amount outstanding on defaulted loans of $83,909;

• Principal amount past due on defaulted loans of $62,582; and

• Total principal and interest collected, as reported on its fiscal-operations report, of $23,178;

then, based on the above figures, the institution's excess overdue amount would be calculated as follows:

(a) 7.5 percent of $616,480 (matured loans) equals $46,236.

(b) $83,908 (principal amount outstanding on defaulted loans) minus $46,236 equals $36,673.

(c) $37,673 divided by $83,909 equals 0.4489.

(d) 0.4489 times $62,582 (past due principal) equals $28,093, the excess overdue amount.

(e) $23,178 (the amount actually collected in the base year) multiplied by 121% equals $28,045.

(f) $28,045 plus $28,093 (the excess overdue amount) equals $56,138, the projected collections.

C. Application Appeal Review—Section 674.7.

The Secretarty proposes to delete parts of § 674.7 which permit an institution to appeal findings under certain elements of the funding formula used to compute its funding level. The Secretary proposes that these deletions from the appeals process would be effective beginning with the 1987–88 award year application review process.

The Secretary proposes to exclude appeals regarding: the computation of the excess overdue amount used to measure collections that would be available if the institution had a lower default rate, the disqualification for FCC for institutions with a default rate greater than 20 percent, and the extent to which an institution can justify that its base year default rate does not reflect current collection efforts. The Secretary believes that an institution's base year default rate is an accurate barometer of the institution's capability to administer the NDSL Program, and therefore proposes these deletions.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The small entities affected by these regulations are small institutions of higher education. In order to identify small institutions and to assess the impact of these regulations on those institutions, using actual current data, one must select an objective measure for determining institutional size. In lieu of a formal definition, it is useful to adopt the proposed definition of small institution of higher education published by the Secretary on January 16, 1981 (46 FR 3920), defining small institutions as those with a total student population of fewer than 550. These regulations change the procedures for allocating program funds by placing increased emphasis on lower default rates. The Secretary certifies that, for the reasons set forth here, this rule will not have a significant economic impact on a substantial number of small institutions of higher education.

As described more fully above, under current regulations two categories of institutions are affected by the default rate criterion: those with a default rate between 10 and 25 percent, which have their FCC reduced, and those with a rate exceeding 25 percent, which receive no FCC for that application year. For those institutions in the first category, with default rates between 10 and 25 percent, the FCC is reduced by 90 percent of the "excess overdue amount," that portion of their defaulted loans which would have been collected if the institution had a 10 percent default rate. The institution, in other words, is treated as if it had an acceptable default rate, and had collected the amount it would have recovered had it a 10 percent rate. Institutions in the second category, those with default rates over 25 percent, do not qualify for new FCC.

These proposed regulations will change the procedures for allocating FCC among institutions by modifying the current default rate parameters, 10 and 25 percent, to 7.5 and 20 percent for the first year these regulations are in effect. Because the impact of the default rate criterion will vary with the level of appropriation, the amount of funds received by an institution as collections and reimbursements for teacher and military cancellations, and other reasources available to the institution, it is impossible to determine exactly the impact of the proposed rule on either large or small institutions.

At most, an estimate of its impact which relies on current program experience can be offered here. In the 1985–86 award year, 2966 institutions participated in the NDSL program and requested new FCC; 1068 of these institutions fell within the definition of small institution used here. The NDSL funds appropriated for this award year were allocated as FCC under the current rule so that small institutions received eight (8) percent of all funds allocated as FCC, and other, or larger, institutions received ninety-two (92) percent of these funds. If the appropriated amounts, FCC requests, collections and default rates that resulted in this 1985–86 FCC allocation remain the same for 1986–87, the distribution of FCC funds under the proposed rule for 1986–87 will remain the same: eight percent of all FCC will be allocated to small institutions, and ninety-two percent to all others. Thus, the proposed rule can reasonably be expected to have no net economic impact on small institutions as a group in 1986–87.

For these reasons the Secretary concludes that the new rule will not have a significant economic impact on a substantial number of small institutions.

Paperwork Reduction Act of 1980

These proposed regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which govern such requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4018, Regional Office Building 3, 7th & D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 674

Education, Loan programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.038 National Direct Student Loan Program)

Dated: February 7, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 674 of Title 34 of the Code of Federal Regulations as follows:

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

1. The authority citation for Part 674 continues to read as follows:

Authority: NDSL Title IV, Part E of the Higher Education Act of 1965, as amended (20 U.S.C 1087aa–1087ii), and Title II of the National Defense Education Act of 1958, as amended (20 U.S.C. 421–429), unless otherwise noted.

2. Section 674.2 is amended by revising the definition of "Default or in default" to read as follows:

§ 674.2 Definitions.

* * * * *

Default or in default: (a) Except as provided in paragraph (b) of this definition, a borrower is in default on a Direct or Defense loan if he or she fails to—

(1) Make an installment payment when due; or

(2) Comply with other terms of the promissory note.

(b) A borrower who failed to make a timely repayment is not in default on a Direct or Defense loan if—

(1) The borrower's loan is current, paid in full or discharged in bankruptcy; or

(2)(i) The borrower states in writing to the institution an intention to repay the loan;

(ii) The borrower evidences that intention by making a payment which reduces the amount then past-due to less than—

(A) Any amount past-due six months before the date of the payment; or

(B) If no amount was past-due six months before the payment is made, the balance of the first required payment missed within that six-month period; and

(iii) If the borrower made the payment described in paragraph (b)(2)(ii) of this definition in a prior month, the borrower has continued to make payments when required under the most recent repayment agreement and each payment has included—

(A) The amount due under that agreement; plus

(B) The additional amount necessary to contiune to reduce the past-due amount.

* * * * *

3. Section 674.6a is revised to read as follows:

§ 674.6a Funding procedures—Federal capital contributions (FCC).

(a) An institution may receive a Federal capital contribution (FCC) calculated under this section if its default rate is not more than 20 percent.

(b) An institution's FCC equals 90 percent of its—

(1) Conditions guarantee minus the sum of its reimbursements for Direct loan cancellations received in the base year and loan repayment calculated under paragraph (c) of this section;

(2) Fair share State increase; and

(3) Fair share National increase.

(c) For purposes of paragraph (b)(1) of this section—

(1) If the institution's default rate is 7.5 percent or less, the Secretary considers its loan repayments to equal 121 percent of the amount it collected in the base year; and

(2) If an institution's default rate is greater than 7.5 percent but not more than 20 percent, the Secretary considers its loan repayments to be—

(i) 121 percent of the amount collected in the base year; plus

(ii) The additional amount it would have collected in the base year if its default rate were 7.5 percent (excess overdue amount).

(3) The Secretary calculates an institution's excess overdue amount—

(i) Determining the amount of defaulted loans that would equal a 7.5 percent default rate by multiplying the total amount of matured loans of the institution by 7.5 percent;

(ii) Subtracting the amount obtained in paragraph (c)(3)(i) of this section (7.5 percent of the matured loans) from the defaulted principal amount outstanding;

(iii) Dividing the amount obtained in paragraph (c)(3)(ii) of this section by the defaulted principal amount outstanding; and

(iv) Multiplying the actual amount of principal past due on defaulted loans by the fraction obtained in paragraph (c)(3)(iii) of this section.

(d) The definitions of "default rate," "defaulted principal amount outstanding" and "matured loans" are contained in § 674.2. However, for purposes of this section, the Secretary, when calculating an institution's default rate, excludes from the numerator of that fraction the following:

(1) Notes referred to the U.S. Commissioner of Education on or before September 15, 1979, if the institution received either a notification of acceptance or a receipt from the Office of Education, and that referral has not been rescinded or rejected.

(2) Notes assigned to the United States on or before June 30 of the base year and accepted by the United States.

(3) Notes for borrowers whose accounts are past due but nor in default.

(e) No institution may receive more Federal capital contribution than it requested.

(20 U.S.C. 1087bb)

4. Section 674.7 is revised to read as follows:

§ 674.7 Application appeal review for the 1987-88 and subsequent award years.

(a) An institution may, at the time specified by the Secretary, request a review of its computed NDSL level of expenditure and its Federal capital contribution (FCC).

(b) A National Appeal Panel appointed by the Secretary conducts the review.

(c) An institution may appeal the following elements used in determining an institution's NDSL level of expenditure of its FCC:

(1) For purposes of determining an institution's FCC award, the expectation of an annual increase in its NDSL collections of 10 percent.

(2) For purposes of determining an institution's self-help need—

(i) The average cost of books and supplies;

(ii) The established expected family contributions;

(iii) The enrollment data used to determine average tuition and fee costs; and

(iv) The award year used as the base year.

(d) The Secretary and the appeal panel evaluate appeals on the basis of the following criteria and documentation required by the Secretary:

(1) The extent to which the institution can justify that an increase in NDSL collections of 10 percent per year is unreasonable.

(2) The extent to which the institution can justify that the average cost of books and supplies does not accurately reflect these costs at the institution.

(3) The extent to which the institution can justify that the standard expected family contribution figures do not accurately reflect the characteristics of the student body at the institution.

(4) The extent to which the institution can justify that the average tuition and fee costs derived from the institution's enrollment data do not accurately reflect these costs at the institution.

(5) The extent to which the institution can justify that the base year used to determine its self-help need under the fair share formula does not accurately reflect the institution's current self-help need.

(e) In establishing an institution's level of expenditure and Federal capital contribution, the Secretary considers the appeal panel's recommendations and its reasons for the recommendations.

(f) The Secretary establishes an approved level of expenditure and Federal capital contribution based on procedures in §§ 674.6 and 674.6a and the appeal panel's recommendations.

(20 U.S.C. 1087bb)

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**Thursday
February 13, 1986**

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

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30 CFR Part 887

Abandoned Mine Land Reclamation Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 887

Abandoned Mine Land Reclamation Program

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

ACTION: Final rule.

SUMMARY: The Department of the Interior's fiscal year 1985 continuing appropriations resolution (H.J. Res. 648–Pub. L. 98–473) authorized the expenditure of Abandoned Mine Land (AML) Funds for the establishment of self-sustaining, individually administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved under section 405 of the SMCRA. These States are, at the present time, the following: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virgina, and Wyoming.

In order to implement the amendment and provide for grants to eligible States for subsidence insurance programs, the Office of Surface Mining is promulgating final rules allowing States with approved reclamation programs under Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87 (SMCRA) to request funds for the establishment and administration of mine subsidence insurance programs.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Office of Surface Mining, Division of Abandoned Mine Land Reclamation, 1951 Constitution Avenue, NW., Washington, DC 20240, or telephone 202–343–7960.

SUPPLEMENTARY INFORMATION:

Background

SMCRA was enacted to establish a nationwide program to protect the environment from the adverse effects of surface coal mining activities and to promote the reclamation of mined areas left without adequate reclamation prior to August 3, 1977. The SMCRA, as formulated, is a complex, comprehensive and broadly remedial regulatory statute intended to govern the conduct and impact of present day coal mining operations.

In addition, Congress recognized that a serious problem existed because of past mining practices, and that a substantial source of funding was needed to support rehabilitation programs to reclaim vast areas of lands affected by these practices. H. Rept. 95–218, 95th Cong., 1st Sess. 135–140 (1977). The SMCRA established the Abandoned Mine Reclamation Fund, 30 U.S.C.A. 1231, to help pay for the restoration of land harmed by past coal mining activities. The reclamation fund derives its revenue from a fee levied on current coal production. All operators of coal mining operations subject to the provisions of SMCRA must pay to the Secretary of the Interior, for deposit in the Fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal is at a rate of 2 per centum of the value of the coal at the mine, or 10 cents per ton, whichever is less. Regulations implementing the abandoned mine land reclamation program were published on October 25, 1978 (43 FR 49932–49952) and revised on June 30, 1982 (47 FR 28574–28604) and codified in 30 CFR Chapter VII, Subchapter R.

Congress included language in section 324 of H.J. Res. 648–Pub. L. 98–473 that amended section 401(c)(1) of SMCRA. The amendatory language provides that moneys in the fund may be used for:

> establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with Section 503 of this Act, provided that funds used for this purpose shall not exceed $3,000,000 of the funds made available to any State under section 402(g)(2) of this Act.

In order to implement the Congressional direction that OSM provide for grants to eligible States for the establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence from underground coal mining, OSM published proposed rules on July 25, 1985. The public comment period closed August 25, 1985. This document contains the final rules implementing Congress' amendatory language along with a discussion of all relevant comments received.

Responses to Public Comments and Discussion of Final Rule

Final Part 887 consists of the following:

Section 887.1 (Scope)

Indicates that the scope of the final rule is to set forth procedures for grants to States having approved State reclamation plans for the establishment, administration, or operation of self-sustaining individual State administered coal mine subsidence insurance programs. One commenter indicated that in several States mine subsidence problems, and mine subsidence insurance programs, exist with respect to other minerals in addition to coal. For this commenter "it is not clear whether States with programs providing coverage from damage caused by other kinds of mines (than coal) are wholly ineligible to apply for funds." The commenter suggested that OSM make moneys available for States whose insurance programs cover subsidence caused by both coal and noncoal mining, but that the States be required to "segregate and account for the grants to ensure that Federal moneys are used for coal mine subsidence." OSM's response is that § 887.12(d) would prevent granted funds from being used to administer noncoal mine subsidence insurance programs since granted moneys may not be used for lands that are ineligible for reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87). Despite the fact that funds granted under this Part cannot be used for noncoal mine subsidence insurance programs, State programs which cover both coal and noncoal subsidence are still eligible to receive funding for the coal mine subsidence part of their programs. As the commenter suggested, in those States with both coal and noncoal subsidence coverage, funds granted under this Part must be segregated and accounted for to ensure that the granted funds are used only for coal mine subsidence programs.

Section 887.3 (Authority)

Provides authority for the Director of OSM to approve or disapprove applications for grants up to a total amount of $3,000,000 for each State with an approved State reclamation plan provided that moneys are available in the State share of the Abandoned Mine Land Reclamation Fund. This provision gives the Director of OSM the flexibility of making a one-time grant of $3,000,000 or a series of grants up to a total amount of $3,000,000. This flexibility is necessary because some eligible States do not have sufficient funds in their State share of the AMLR Fund at the present time to support funding a grant at the $3,000,000 level. This provision will then allow these States the latitude to request funds for subsidence insurance programs over a period of years so as not to exhaust their capacity to continue to receive grants provided for in 30 CFR Part 886 necessary to support their State AML Reclamation Programs.

Section 887.5 (Definitions)

Since certain essential terms used in the legislation establishing subsidence insurance programs have not been defined, OSM, in order to implement the Congressional direction, is promulgating the following definitions:

Establishment—is defined to mean either the development of a subsidence insurance program or the operation or administration of a subsidence insurance program. By defining "establishment" to mean operation and administration of a program as well as development of a new program, OSM is implementing the Congressional intent found in the legislative history of the amendment. Senator Byrd, the sponsor of the amendment, indicated (Congressional Record—Senate of October 2, 1984 at p. S 12691) that the amendment would permit States to use a portion of their AMLR funds to operate subsidence insurance programs.

Private Property—is defined to mean 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. This inclusive definition will allow the States the greatest latitude to design subsidence insurance programs to meet their specific local and State needs. States are given the authority to specify the extent of insurance coverage needed for their specific subsidence insurance programs. The extent of the coverage provided by each State will be directly related to the type of program each State elects to operate. For example, one State may want to provide extensive coverage for land, structures, commercial, residential, and private utilities for their full replacement value. Another State may want to put in place a program that pays only for a portion of structural damage.

Self-sustaining—means that a subsidence insurance program maintains an insurance rate structure which is designed to be actuarially sound. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining shall not preclude the use of funds from other non-Federal sources. One commenter indicated that the sentence "self-sustaining shall not preclude the use of funds from other non-Federal sources" might imply that a program is self-sustaining as long as it can obtain contingency funds to cover losses as well as that a program, notwithstanding its actuarially sound structure, can also obtain additional funds from other sources. The commenter requests that OSM clarify the language to make clear the intent. OSM agrees and states that the intent of the sentence is to mean that a program, notwithstanding its actuarially sound structure, can also obtain additional funds from other sources. This interpretation is meant to ensure that mine subsidence insurance programs established in the States can have a rate structure that can be subsidized from non-Federal sources. Another commenter suggested that in order to make the State programs "self-sustaining", a requirement should be included that the State-administered programs, in order to be eligible for funding, contain clauses which require subrogation of the rights of the insured against the company or companies responsible for the subsidence occurrence to the limits of the payments made under the policy. This commenter further suggested that the State program contain procedures to obtain such recovery of payments made from the responsible company or companies consistent with the subsidence laws of that State. This commenter further argues that such a provision is necessary because only with such a provision can the subsidence insurance program "truly be self-sustaining, since the premiums paid by individuals for elective coverage in many of the coal States would be insufficient unless they were set at a prohibitively high rate, if the program were dependent entirely on premiums after the seed money was expended." OSM agrees and has added the following provision to the definition of "self-sustaining" in the final rule: "Self-sustaining requires that State subsidence insurance programs provide for recovery of payments made in settlements for damages from any party responsible for the damages under the law of the State."

State administered—is defined to mean a subsidence insurance program administered either directly by a State agency or for a State through a State authorized commission, board, contractor, such as an insurance company, or other entity subject to State direction. This grant program is intended only to provide seed money for the creation of State programs which will be administered solely by the participating States. Neither the establishment or operation of these programs will give rise to any further Federal responsibility. One commenter noted that the Congressional direction (in establishing the program) indicates that the program may only cover those damages caused by land subsidence "resulting from underground coal mining." The commenter asked if there is a need to define the broadness of the phrase "resulting from underground coal mining". The commenter further asked if the phrase could include land subsidence which is indirectly related to underground mine voids? The commenter also asked how conclusive must the facts be to support a claim that the damage was a result of an undergound mine void? For this commenter, it is "often, without extensive testing, hard to affirmatively conclude that damage is mine subsidence related." The commenter asks "should your office (OSM) provide direction on this point?" OSM's response is that it does not have to provide direction on the issue because the party which asserts damage bears the burden of proof of such damage and that such damage be directly related to past coal mining practices. The nature and adequacy of such proof will necessarily vary on a case-by-case basis.

Section 887.11 (Eligibility for Grants)

Provides that only States with approved reclamation plans under 30 CFR Part 884 are eligible to receive grants for subsidence insurance programs provided the State has sufficient funds in its State share of the AMLR Fund.

Section 887.12 (Coverage and Amount of Grants)

Paragraph (a) provides that moneys granted may be used to cover costs to the grantee agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A-87. One commenter expressed concern that proposed paragraph (a) does not permit use of the funds to pay claims, to pay adjusters, and for administrative costs involved with issuing policies under a program. The commenter asserts that these costs often are billed to the State program directly by a private contractor and will not necessarily be charged by "State or Federal agencies or local jurisdictions." For this commenter, it is preferable for the granted funds to be used for a broad range of purposes. The commenter concluded that "if OSM interprets the Act to forbid use of these funds to pay claims, it should consider allowing these funds to be used for other expenses, such as payments to claim adjusters and administrative expenses." OSM's response is that the commenter is reading section (a) too narrowly. The intent of section (a) was to authorize the grantee agency to use moneys to cover costs to that agency for services and materials obtained from other State, Federal or local agencies. The intent was not to exclude payments to other persons or entities.

Moreover, it is clearly the intent of the Congressional amendment and these implementing rules to allow granted funds to be used to pay for administrative costs associated with the establishment and operation of subsidence insurance programs.

One commenter indicated that it is "stated (in the proposed rule) that the grant monies may be used to cover capitalization requirements and initial reserve requirements if allowed by law or Federal regulations." The commenter requested clarification with respect to the phrase "if otherwise allowed by law or Federal regulation." OSM's response is that the phrase was included in the proposed rules because pending enabling legislation to set up subsidence insurance programs in some States contained capitalization or initial reserve requirements. OSM wanted to assist the establishment of such programs by allowing granted funds to be utilized for capitalization or initial reserve requirements as mandated by any enabling State legislation. In reviewing the proposed rule, OSM does not know of any applicable Federal regulation on the issue of capitalization or initial reserve requirements. OSM has, therefore, modified the language in the final rule to clarify the issue by deleting the phrase "if otherwise allowed by law or Federal regulation" so that the final rule now reads: "Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by State law provided use of such moneys is consistent with OMB Circular A–102." To comply with OMB Circular A–102, grant funds may be identified in the letter of credit as being used to meet capitalization or reserve requirements. However, such funds must remain in the Federal letter of credit until the time they are needed for expenditure. Funds may not be withdrawn from the letter of credit and deposited in State accounts prior to their being needed.

Paragraph (b) provides that grant applications must contain narrative statements describing how the subsidence insurance program is "State administered" and how the funds requested will achieve a self-sustaining individual State administered program to insure private property against subsidence resulting from underground coal mining. These narrative statements are necessary in order to evaluate the grant application's objectives relative to the purposes for which the subsidence insurance program was established. One commenter indicated that proposed paragraph (b) lacks sufficient level of detail in the requirement that a State demonstrate that the State insurance program will be self-sustaining. For this commenter, the State should provide a "reasoned analysis of the insurance risk under the proposed State program, including an assessment of the historical and projected magnitude of the subsidence program and the population at risk, the projected level of participation and premium costs involved, and other factors necessary for a reasoned and informed OSM projection that the program will truly be self-sustaining beyond the seed funding." OSM's response is that it declines to specify what particular elements need to go into the narrative statement describing how the funds requested will achieve a self-sustaining individual State administered program. OSM will review each narrative on its merits and determine if the statement is reasonable and justifiable since it believes the requirements for "self-sustaining" will vary from State-to-State.

Section (c) provides that grants cannot exceed a total of $3,000,000 per State. This provision allows each State the flexibility to request grant funds as needed or as available in its State share of the AMLR Fund up to a total of $3,000,000. Grant funds can be used for all eligible and necessary expenses related to establishment, administration, and operation of a subsidence insurance program, including payments to other State agencies for services provided in establishing and administering the Program.

Paragraph (d) provides that moneys granted may not be used for lands that are ineligible for reclamation funding under Title IV of SMCRA. Specifically, this provision excludes payments from granted funds for subsidence damage caused by all active mining, mines abandoned or inadequately reclaimed after August 3, 1977, and noncoal mining. In addition, granted funds cannot be used to pay for the actual construction costs of housing or for damages to public property.

Paragraph (e) provides that insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with the Uniform Administrative Requirements for Grants to States and Local Governments, OMB Circular A–102, attachment E. The purpose of this Subsection is to clarify for the States how to account for moneys received as insurance premiums. The insurance premiums, however, will only be considered program income during the existence of the grant. Once the grant is closed out, there are no further obligations on the State. One commenter expressed a preference that "income to a subsidence insurance program as premiums not be treated as program income under A–102." For this commenter, the "accounting, reporting and possible threat of return of premiums could impact the overall objective of establishing self-sustaining programs in States needing these programs." OSM's response is that the treatment of insurance premiums as program income is required under OMB Circular A–102 and program income must be used to further eligible subsidence insurance program objectives.

Section 887.13 (Grant Period)

Establishes the grant funding period to be no longer than eight years. Eight years was chosen in order to allow sufficient time for granted funds to be utilized in operating the subsidence insurance program.

Section 887.13 (Grant Administrative Requirements and Procedures)

Cross references the rules applicable to State reclamation grants. This cross reference provides for consistency and uniform treatment of grants under the AMLR program. One commenter indicated that the grant of funds should be subject to the same provision for termination or suspension where it appears that they are being utilized inconsistently with amended section 401 of SMCRA. OSM's response is that by cross referencing the rules applicable to State reclamation grants, provisions governing termination or suspension of subsidence insurance grants are addressed (see 30 CFR 886.18).

Procedural matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

These rules will not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

Since the information collection requirement contained in the rules involve fewer than 10 respondents annually, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

National Environmental Policy Act

With respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), OSM has prepared an environmental assessment (EA) on this final rule and has determined that this rule will not significantly affect the quality of the human environment. The EA and finding of no significant impact are on file in the OSM Administrative Record, Room 5124B, 1100 L Street, NW, Washington, DC.

Under 5 U.S.C. 553(d), good cause exists to make this rule effective immediately upon publication. The legislative mandate for use of AML moneys for establishing insurance programs was passed in 1984 and must be fully implemented. At least one state has informed OSM that it intends to submit its subsidence insurance program for approval as soon as this rule is made final. The immediate implementation of this rule will assist in providing essential protection to citizens who may be affected by coal mine-related subsidence.

List of Subjects in 30 CFR Part 887

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Acordingly, 30 CFR Chapter VII, Subchapter R is amended by adding part 887.

Dated: January 21, 1986.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

1. Part 887 is added as follows:

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

Authority: Sec. 401(c)(1), Pub. L. 95–87, 91 Stat. 456, as amended by Pub. L. 98–473, 98 Stat. 1875 (30 U.S.C. 1231).

§ 887.1 Scope.

This part sets forth procedures for grants to States having an approved State reclamation plan for the establishment, administration and operation of self-sustaining individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining.

§ 887.3 Authority.

The Director is authorized to approve or disapprove applications for grants up to a total amount of $3,000,000 for each State with an approved State reclamation plan provided moneys are available under § 872.11(b)(2) of this chapter and section 402(g)(2) of Pub. L. 95–87 (30 U.S.C. 1232).

§ 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.

Self-sustaining—means maintaining an insurance rate structure which is designed to be actuarially sound. Self-sustaining requires that State 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. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining shall not preclude the use of funds from other non-Federal sources.

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

§ 887.10 Information collection.

Since the information collection requirement contained in 30 CFR 887.12 has fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

§ 887.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State reclamation plan approved under Part 884 of this Chapter and if it has funds available under § 872.11(b)(2) of this Chapter and section 402(g)(2) of Pub. L. 95–87 (30 U.S.C. 1232).

§ 887.12 Coverage and amount of grants.

(a) An agency 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 costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A–87. Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by applicable State law provided use of such moneys is consistent with OMB Circular A–102.

(b) The grant application shall contain the following:

(1) A narrative statement describing how the subsidence insurance program is "State administered," and

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

(c) Grants funded under this Part cannot exceed a total of $3,000,000 per State.

(d) Moneys granted may not be used for lands that are ineligible for reclamation funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87).

(e) Insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with the Uniform Administrative Requirements for Grants to States and Local Governments, OMB, Circular A-102, attachment E.

§ 887.13 Grant period.

The grant funding period shall not exceed eight years from the time the grant is approved by OSM. Unexpended funds remaining at the end of any grant period shall be returned according to OMB Circular A-102, attachment E.

§887.15 Grant administration requirements and procedures.

The requirements and procedures for grant administration set forth for State reclamation grants in Part 886 of this chapter shall be used for subsidence insurance grants.

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