# Sunshine Act Meetings

Federal Register
Vol. 56, No. 207
Friday, November 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## COMMISSION ON NATIONAL AND COMMUNITY SERVICE

**TIME AND DATE:** November 15, 1991 from 9:00 a.m. to 5:30 p.m. and November 16, 1991 from 9:00 a.m. to 12:30 p.m.

**PLACE:** Herzfeld Auditorium, Hannon Hall, Catholic University of America, 4th Street and Michigan Avenue, N.E., Washington, D.C.

**STATUS:** The meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** The Board of Directors of the Commission on National and Community Service will meet on November 15–16, 1991 to discuss the strategies, priorities and regulations to implement the National and Community Service Act of 1990. The public is invited to address the Board from 4:30 p.m. to 5:30 p.m. on November 15, 1991, with a focus on the role of the Commission, and from 9:15 to 10:15 a.m. on November 16, 1991, with a focus on the regulations and application forms set forth in the Notice of Proposed Rulemaking, to be published in the **Federal Register** on November 8, 1991. Statements may not exceed 3 minutes, although supplementary written material may be provided. Please provide at least 28 copies of any such materials, either in advance or at the meeting. To request a time slot for the public comment period, please send a request in writing to the Commission on National and Community Service, P.O. Box 22119, Washington, D.C. 20033–0199. Requests must be received no later that close of business, November 14. Any remaining time during the public comment period will be made available for other persons who submit a request to the Commission on November 15 from 4:00 p.m to 6:00 p.m. at a place in Herzfeld Auditorium to be designated at the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Terry Russell, General Counsel, Commission of National and Community Service, P.O. Box 22119, Washington, D.C. 20033–0119, (202) 606–4873.

**Catherine Milton,**

*Executive Director, Commission on National and Community Service.*

[FR Doc. 91-27057 Filed 11-5-91; 4:25 pm]

**BILLING CODE 6820-BA-M**

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, November 5, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to certain financial institutions.

Applications for waiver of the cross-guaranty provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Judith Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 5, 1991.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 91-27059 Filed 11-5-91; 4:45 pm]

**BILLING CODE 6714-0-M**

## FEDERAL ELECTION COMMISSION

**"FEDERAL REGISTER" NUMBER:** 91–25803

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, October 31, 1991, 10:00 a.m., meeting Open to the Public.

The Following Items Were Added to the Agenda:

Future Meetings.

Publication of Matching Fund Submission Dates in **Fedeal Register.**

**"FEDERAL REGISTER" NUMBER:** 91–26468.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday November 7, 1991, 10:00 a.m., Meeting open to the Public.

The following items are added to the Agenda:

Advisory opinion 1991–29: Sundstrand Corporation, Inc. (continued from meeting of October 31, 1991)

Proposed Revisions to Bank Loan Regulations, (continued form meeting of October 31, 1991)

**DATE AND TIME:** Wednesday, November 13, 1991, 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Title 26 Certification Matters
Advisory Opinion 1991–32: CEC, Inc.
Administrative Matters

**DATE AND TIME:** Wednesday, November 13, 1991, to be Convened After the Open Meeting

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

**Delores R. Harris,**

*Administrative Assistant.*

[FR Doc. 91–27154 Filed 11–6–91; 3:17 pm]

BILLING CODE 6715–01–M

## FEDERAL MARITIME COMMISSION

**TIME AND DATE:** 10:00 a.m., November 13, 1991.

**PLACE:** Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573–0001.

**STATUS:** Open.

**MATTER(S) TO BE CONSIDERED:**

1. Docket No. 91–14—*Notice of Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences*—Consideration of Comments.
2. Docket No. 91–20—*Exemption of Certain Marine Terminal Services Arrangements*—Consideration of Comments on Proposed Rule.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91–27101 Filed 11–6–91; 12:48 pm]

BILLING CODE 6730–01–M

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10:00 a.m., Wednesday, November 13, 1991.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 6, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91–27074 Filed 11–6–91; 10:50 am]

BILLING CODE 6210–01–M

## RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:36 a.m. on Tuesday, November 5, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) Corporation business; (2) contracting matters; and (3) the early termination of a FSLIC Assistance Agreement.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), and seconded by Vice Chairman Andrew C. Hove, Jr., and concurred in by Chairman William Taylor, Judith A. Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC.

Dated: November 5, 1991.

Resolution Trust Corporation.

**John M. Buckley, Jr.,**

*Executive Secretary.*

[FR Doc. 91–27066 Filed 11–6–91; 9:26 am]

BILLING CODE 6714–01–M

# Corrections

Federal Register
Vol. 56, No. 217
Friday, November 8, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-932-4214-10; A-060160, AA-502]

### Termination of Temporary Segregative Effect and Opening of Lands; Alaska

*Correction*

In notice document 91-24259 appearing on page 50924 in the issue of Wednesday, October 9, 1991, make the following correction:

In the second column, under **SUPPLEMENTARY INFORMATION**, in the sixth and seventh lines, "October 31, 1991" should read "October 21, 1991".

BILLING CODE 1505-01-D

## NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

### Meeting

*Correction*

In notice document 91-17746 appearing on page 34225 in the issue of Friday, July 26, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-17745" should read "FR Doc. 91-17746".

BILLING CODE 1505-01-D

## NATIONAL INDIAN GAMING COMMISSION

### 25 CFR Chapter III

### Annual Fees Payable By Class II Gaming Operations

*Correction*

In rule document 91-19374 beginning on page 40702 in the issue of Thursday, August 15, 1991, make the following correction:

§ 514.1 [Corrected]

On page 40710, in the second column, in § 514.1(c)(7), in *Example 3*, in the sixth line, "2%" should read "1%".

BILLING CODE 1505-01-D

## NATIONAL INDIAN GAMING COMMISSION

### 25 CFR Part 502

### Definitions Under the Indian Gaming Regulatory Act

*Correction*

In proposed rule document 91-26434 beginning on page 56278 in the issue of Friday, November 1, 1991, make the following correction:

§ 502.1 [Corrected]

On page 56281, in the third column, in § 502.1(l), in the last line, "class II" should read "class III".

BILLING CODE 1505-01-D

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2482]

### Mississippi (With Contiguous Counties in Arkansas, Tennessee, Alabama, & Louisiana); Declaration of Disaster Loan Area

*Correction*

In notice document 91-6686 beginning on page 12054 in the issue of Thursday, March 21, 1991, make the following correction:

On page 12055, in the first column, in the file line at the end of the document, "FR Doc. 91-6586" should read "FR Doc. 91-6686".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 91-CE-58-AD; Amendment 39-8072; AD 91-23-03]

### Airworthiness Directives; Avions Mudry & Cie Model CAP10B Airplanes

*Correction*

In rule document 91-25481 beginning on page 54782 in the issue of Wednesday, October 23, 1991, make the following correction:

On page 54782, in the second column, under **DATES**, in the first line, "December 10, 1992" should read "December 10, 1991".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 23 CFR Part 1327

[Docket No. 84-02; Notice 8]

RIN 2127-AD26

### Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

*Correction*

In rule document 91-19771 beginning on page 41394 in the issue of Tuesday, August 20, 1991, make the following corrections:

1. On page 41394, in the third column, in the third paragraph, in the third line, "States" was misspelled.

2. On page 41396, in the second column, in the first full paragraph, in the third line, "the" should read "The".

3. On the same page, in the third column, in the last paragraph, after "NDR" insert "Act".

4. On page 41398, in the second column, in the fifth full paragraph, in the sixth line, "transit" should read "transmit". In the last paragraph, in the first line, "States" should read "State"; and in the last line, "argues" should read "agrees".

5. On page 41400, in the second column, in the first full paragraph, "is" should read "its".

6. On page 41401, in the third column, in the third paragraph, in the seventh line, "NHTSA" should read "NPRM".

7. On page 41403, in the first column, in the fourth paragraph, in the fifth line, "is" should read "in".

§ 1327.6 [Corrected]

8. On page 41407, in § 1327.6(e)(4), in the third line, "date" should read "data".

**Editorial Note:** For related document, see the Rules and Regulations section in this issue of the Federal Register.

BILLING CODE 1505-01-D

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[FI-38-91]**

**RIN 1545-AP73**

## Extension of Time for Real Estate Mortgage Investment Conduits To Provide Reporting Information

*Correction*

In proposed rule document 91-22850 beginning on page 49525 in the issue of Monday, September 30, 1991, make the following correction:

On page 49525, in the third column, in the first and second lines, "November 29, 1991" should read "(Insert date that is 60 days after the date a Treasury Decision based on these proposed regulations is published in the Federal Register)."

BILLING CODE 1505-01-D

federal register

Friday
November 8, 1991

## Part II

# Department of the Interior

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 795, et al.

## Abandoned Mine Land Reclamation Fund Reauthorization Implementation; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 795, 870, 872, 873, 874, 875, 876 and 886**

**RIN NO. 1029-AB49**

# Abandoned Mine Land Reclamation Fund Reauthorization Implementation

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

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to amend its abandoned mine land regulations, 30 CFR subchapter R in light of recently enacted changes to title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Public Law 95-87, as amended by Public Law 101-508 (November 5, 1990).

**DATES:** *Written Comments:* OSM will accept written comments on the proposed rules until 5 p.m. Eastern Time, January 7, 1992.

*Public Hearings:* Upon request, OSM will hold a public hearing on the proposed rules in Washington, DC, St. Louis, Missouri, and Denver, Colorado, on January 6, 1992 at 9 a.m. OSM will accept requests for public hearings until 5 p.m. Eastern Time on December 6, 1991. Individuals wishing to attend but not testify at any hearing should contact the person identified under "For Further Information Contact" beforehand to verify that the hearing will be held.

**ADDRESSES:** *Written Comments:* Hand deliver to the Office of Surface Mining, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, room 5131L, 1951 Constitution Avenue, Washington, DC 20240.

*Public Hearings:* Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and 1520 Market Street, St. Louis, Missouri.

*Request for Public Hearings:* Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

**FOR FURTHER INFORMATION CONTACT:** D.M. Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-208-5365 (Commercial) or 268-5365 (FTS).

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rule
IV. Effect on State Programs
V. Procedural Matters

## I. Public Comment Procedures

*Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

*Public Hearings*

OSM will hold public hearings on the proposed rule by request only. The times, dates, and addresses scheduled for hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**").

Any person interested in participating at a hearing at a particular location should inform Mr. Lytton (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time on December 6, 1991. If no one has contacted Mr. Lytton to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

Availability of Copies

Copies of these proposed regulations may be obtained from the U.S. Department of the Interior, Administrative Record Room, 1100 L Street, NW., room 5131, Washington, DC 20240, Telephone 202-343-5492 or any of OSM's field offices.

## II. Background

*A. Summary of AML Program—Public Law 95-87*

The Abandoned Mine Land Reclamation Program (AML) was established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 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.

Only areas abandoned prior to the date of enactment of SMCRA, where there is no continuing reclamation responsibility by any person under state or federal law, are eligible for reclamation under title IV. Funding of reclamation projects is subject to a priority schedule. For example, "priority 1" projects concern those which 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 which do not necessarily constitute a public health or safety threat.

The Fund, administered by the Secretary of the Interior through the Office of Surface Mining Reclamation and Enforcement (OSM), is financed by a reclamation fee assessed 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 authority to collect the reclamation fee was due to expire on August 3, 1992, 15 years after the date of enactment of SMCRA.

The Fund is divided into the State/Tribal and Secretarial shares with each State or Indian tribe under a federally approved reclamation program (generally referred to as "program" or "primacy" States) entitled to fifty percent of the reclamation fees collected from coal operations within the State or Indian lands. Annually, these States/Tribes receive reclamation project construction grants and administrative grants from their share of the Fund. States are also authorized to use up to $3 million of their State share funds to establish State coal mine subsidence insurance programs, and deposit ten percent of their annual grants into special interest-bearing State trust accounts for use after August 3, 1992.

The Secretarial share of the Fund is allocated among a number of Federal programs such as emergency projects (involving sudden and life-threatening situations which demand immediate attention), high-priority reclamation projects in States and Tribes without federally approved reclamation programs (referred to as "nonprogram" States), the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture through the Soil Conservation Service, and the Small Operators Assistance Program (SOAP) which provides financial assistance to coal operators who produce less than 100,000 tons per year to help defray certain costs associated with the surface coal mining permitting process. Remaining funds are distributed to program States under an allocation formula. At present, 23 States and three Indian tribes have OSM approved abandoned mine reclamation programs.

Noncoal abandoned mine reclamation projects can be undertaken in only two instances. Program States and Tribes can utilize State or Tribal share monies to reclaim an abandoned noncoal mine site if the request is made by the State governor or Tribal head and the project represents a public health and safety hazard. Moreover, once a program State or Tribe certifies it has completed the reclamation of all eligible abandoned coal mine projects, it can then use the full amount of its State or Tribal share for abandoned noncoal mine land reclamation projects.

*B. AML Regulations*

On October 25, 1978, OSM published final regulations implementing an abandoned mine land reclamation program incorporating the provisions of title IV of the Act. The regulations establish procedures and requirements for the preparation and implementation of State, and Indian reclamation programs, consisting of reclamation plans, submission of annual projects and applications for annual grants. Additional parts of this subchapter include provisions for Federal, State, and Indian Abandoned Mine Reclamation Funds, general reclamation objectives, rights-of-entry, liens, emergency reclamation acquisitions, disposition of lands and waters, reclamation on private lands, and Indian reclamation programs.

Regulations relating to the amount and collection of fees were promulgated in 30 CFR part 837 on December 31, 1977 (42 FR 62713). This part has since been redesignated as Part 870.

On June 30, 1982, OSM published revisions to its abandoned mine land regulations in response to the Administration's request for regulatory review. These revised rules concerned the establishment and administration of the Abandoned Mine Land Reclamation Program by the States, Tribes, and Federal Government, as required by SMCRA. For more information regarding the exact nature of these revisions refer to 47 FR 28574–28604 (June 30, 1982).

*C. Accomplishments of the Abandoned Mine Land Reclamation Program*

From the beginning of the program through the fourth quarter of 1990, reclamation fee collections into the Abandoned Mine Land Reclamation Fund amounted to approximately $2.7 billion. The Fund also received donations, user charges and other recovered amounts such as late-payment fines. In 1990 collections from these sources totaled $1,215,371.

Since the beginning of the program, OSM has encouraged States to take over emergency project responsibility. Beginning in 1983, Arkansas and Montana assumed emergency project responsibility, followed by Illinois in 1984. During 1988–89, Kansas, Virginia, and West Virginia took over responsibility for their emergency projects, and Alabama assumed responsibility in 1990. In 1989, OSM established a new emergency program policy that provided Federal share funds, in addition to the formula-based allocation, to States with emergency programs. Since 1988, it has been OSM policy to stabilize the emergency portion of AML problems permanently, and then to refer any remaining work at the site to the State for consideration under its regular AML reclamation program. In 1990, OSM initiated 189 emergency projects, while States with emergency programs initiated 118.

Beginning with Texas in 1980, OSM has approved State reclamation programs so that currently all primacy States except Mississippi have approved AML programs. During 1988 the Navajo and Hopi Tribe programs were approved, and in 1989 the Crow Tribe received approval for its program. States and the Tribes received net grants totaling $125,706,879 in 1990. Since 1981, when the States began receiving AML administrative grants to operate their programs and construction grants to complete reclamation projects, through 1990, they have received over $1.4 billion from the Fund.

The minimum-level AML program was established by Congress in 1988 to assure funding for existing high-priority projects in States where the annual State share allocation is too small for the State to administer a program and initiate reclamation. Seven States (Arkansas, Iowa, Kansas, Maryland, Missouri, North Dakota, and Oklahoma) were eligible for minimum-level program funding during 1990 and received such grants during the year. Authorized funding of the minimum-level program was $1,500,000 for 1990. The minimum-program States received $7,951,324 of Federal share money in 1990, which included over $5,720,000 to bring these States to the minimum program level.

*D. Abandoned Mine Reclamation Act of 1990*

Since 1977 when the AML Fund was established, many of the scars left from past mining practices have been reclaimed. Thousands of acres have been contoured, revegetated and brought back to productive uses. Despite such accomplishments, the inventory of unreclaimed high priority public health and safety problems is still significantly high. All such problems would not have been addressed with AML funds collected through 1992, the original expiration date for fee collection.

In light of this continuing need to address high priority coal problems, Congressman Rahall introduced a bill, H.R. 2095, in the 101st Congress to extend the AML fee and adjust the allocation of AML funds. A detailed examination of this bill, as amended, can be found in H.R. Report 294, 101st Congress, 1st Session (October 18, 1989). H.R. 2095, as amended, was passed by the House of Representatives on October 23, 1989.

On October 16, 1990, the House again passed H.R. 2095 as part of H.R. 5835, the Omnibus Budget Reconciliation Act of 1990. In conference with the Senate, the text of H.R. 2095 was retained except for six modifications and one addition. They are as follows: First, the authority to collect reclamation fees was extended through September 30, 1995, rather than the year 2007. Second, a provision that provided for modified reclamation fees after 1992 in States which have certified the completion of all abandoned coal mine projects was dropped. Third, provisions that would have expanded the scope of the emergency program were deleted. Fourth, while the House bill limited the objectives of the fund to the first three priorities listed in current law, the amendments maintain the current law list of project priorities. Fifth, the requirement that the Secretary promulgate environmental standards for reclamation projects was deleted. Sixth, the bill's authorization of a new abandoned minerals and mineral materials mine reclamation fund was dropped. Finally, an amendment relating to certain projects in certified States was adopted.

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, which included the Abandoned Mine Reclamation Act of 1990, as amended. Besides extending the authority to collect reclamation fees, the amendments to title IV contain several other significant provisions as follows:

The amendments concentrate a greater amount of resources toward combating the highest priority abandoned coal mine reclamation projects. This goal is accomplished by allocating forty percent of the Secretarial share of funds to program States and Indian Tribes until they complete all of their priority 1 & 2 abandoned coal mine reclamation projects.

The new provisions also provide additional resources to combat abandoned coal mine hazards by enabling interest to accrue to amounts in the AML Fund and by strengthening reclamation fee collection and auditing authority.

The legislation also recognizes the severe hazards to public health and safety caused by water supplies contaminated by past mining practices.

The new amendments allow States to establish comprehensive acid mine drainage programs to combat the devastating effects on land, water and quality of life in areas affected by acid mine drainage.

The new provisions allow States to address high priority coal sites abandoned after enactment of the 1977 Act. Sites which were abandoned prior to a State receiving primacy pursuant to title V of SMCRA, or which remain unreclaimed due to the insolvency of a surety company, can now be addressed with title IV funds.

The new legislation provides for a specific allocation of collected fees from which funds may be transferred annually to the Department of Agriculture to administer the Rural Abandoned Mine Program under section 406 of SMCRA.

The new legislation expands the rights of States which have certified the completion of all known coal problems to utilize State share funds for noncoal reclamation purposes, including the protection, repair, replacement, construction, or enhancement of public facilities damaged by past mining practices or which exist in communities adversely impacted by present mining.

Finally, the new legislation provides that mineral owners and purchasers be reported to OSM each quarter with the filing of the Form OSM–1.

### III. Discussion of Proposed Rules

*A. Organization*

The regulatory revisions are intended to implement the requirements of the Act consistent with the purposes stated in section 102(h), its legislative history, and the Secretary's commitment to avoid excessive and burdensome rules. The material is organized into parts which comprise subchapter R. At the end of each part, comments received from interested parties as a result of OSM's outreach program to involve the public in the development of proposed regulations are addressed. It should also be noted that the term "allocated" as used in this preamble refers to the earmarking of funds for a specific purpose. This administrative identification in OSM records of monies in the fund for a specific purpose does not mean that such monies will be appropriated in a specific appropriation or will be available for use in the year in which it was allocated.

*B. Proposed Rules*

Part 795 Permanent Regulatory Program—Small Operator Assistance Program

OSM proposes to revise § 795.4 which contains a list of the information collection requirements contained in part 795 and the Office of Management and Budget (OMB) clearance number. The proposed revision would update the data contained in this section by including the estimated reporting burden per respondent for complying with the information collection requirements. The proposed revision would also provide the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

OSM is proposing in paragraph 795.6(a)(2) to change the production level of 100,000 tons to 300,000 tons with respect to operator eligibility under the SOAP program. This change is nondiscretionary and has been mandated by the Abandoned Mine Land Reclamation Act of 1990.

OSM is proposing in paragraphs 795.6(a)(2)(i) and (a)(2)(ii) to change five percent to ten percent with respect to the baseline, above which ownership will play a role in determining attributed coal production. The basis for the ten percent baseline is section 507(b)(4) and regulations for determining ownership and control, as well as permit information requirements promulgated thereunder. The change would make SOAP eligibility provisions for ownership and control consistent with all other similar requirements in the permanent program rules.

Section 795.12 deals with applicant liability. OSM is proposing in paragraph 795.12(a)(2) and (a)(3) to delete 100,000 tons and add the following language "coal tonnage governing SOAP eligibility in effect at the time assistance was approved". The deletion of "100,000 tons" is mandated by the production cap increase to 300,000 tons authorized by the new amendments to SMCRA. Through the added language, OSM is attempting to define a transition phase keyed to the time an operator is approved for assistance, i.e. determined eligible, that will be needed as OSM, and subsequently the States, change their rules. OSM believes that the added phrase is reasonable and provides ample flexibility and guidance for determining the production standard against which operator liability would be reviewed. Other options for a transition exist. These could include: (1) The 300,000 ton standard, when it becomes effective, either immediately applying to all operators under a liability period or applying to operators under their next annual liability cycle; or (2) establishing an effective date of October 1, 1991, for the 300,000 ton eligibility and liability standard irrespective of the date that OSM or States promulgate final rule revisions. OSM will consider comments on alternatives other than the proposal.

OSM is proposing to remove paragraph 795.12(a)(3) which deals with transferred liability in the event a permit having been supported with SOAP assistance is sold, transferred, or assigned to another person. OSM views the existing requirement as one that is overly disruptive of legitimate and normal business practices in the coal industry. Notwithstanding this view, OSM emphasizes that sales and transfers to family members, or completed under the guise of a reorganization solely for the purpose of obtaining assistance, would continue to be liable under the provision of § 795.12. It may be difficult to determine that a company sought SOAP assistance primarily as a basis for a future transfer or sale. For this reason, OSM is interested in receiving comments on the proposed removal of § 795.12(a)(3) with respect to whether the proposed removal would significantly increase the potential for abuse in the program, or regulatory criteria that could be used to distinguish between normal business practices and those practices that will result in abuse of the SOAP.

OSM is proposing to add "Drilling and" at the beginning of § 795.9(b)(2). The objective is to clarify, consistent with section 507(c) of the Act, that drilling where it is needed to provide the rock samples for overburden analysis is an authorized service under the program. OSM believes that to link these services is both logical and technically sound. Drilling of ground observation wells is authorized currently on a case-by-case basis. To coordinate any drilling with respect to serving needs for both rock samples and ground water monitoring for baseline data would integrate several important technical components of SOAP assistance and help to create a sounder environmental analysis. It would also have the added benefit of shortening the time frame for completion of technical studies.

OSM wishes to emphasize that drilling should be used only in situations where adequate samples cannot be obtained from other sources such as existing cores or nearby freshly exposed highwalls. Furthermore, drilling is in no way meant to be explorative in nature. Exploration activities are the responsibility of the operator and the program administrator must ensure that the information on coal depth, thickness, and reserves required under existing § 795.7 is reasonably accurate before authorizing drilling.

Part 870 Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting

Title IV of the Surface Mining Control and Reclamation Act of 1977 (the Act) directed the Secretary of the Interior to collect per-ton reclamation fees from coal mine operators to support the reclamation and other activities listed under this Title. OSM developed a reclamation fee collection program and published rules in the **Federal Register** to assist mine operators in meeting their fee obligations, to specify management activities for fee collection, and to define a range of compliance activities that include compliance audits, debt collection, and litigation procedures.

The major components of the fee collection program are the fee collection system, the fee compliance system, and the litigation system.

Fee collection system: OSM operates and maintains the Abandoned Mine Land Fee Collection System (AMLFCS) in Denver, Colorado. The AMLFCS is an automated system which records and accounts for (1) collections and deposits of reclamation fees into the Federal depository, (2) fee payments and delinquencies, and (3) identification of collections for appropriation and use by States and Indian Tribes under OSM approved reclamation programs.

Fee compliance system: Fee compliance officers are located in the coal producing regions to insure that fees are collected through appropriate investigations and audits.

Litigation system: The Associate Solicitor, Division of Surface Mining, in concert with the Department of Justice (Justice), is responsible for litigation associated with the collection of delinquent fees. The Division initiates enforcement action through Justice to collect delinquent fees and provides legal assistance to OSM on fee-related issues.

On December 13, 1977, OSM published final rules as part 837 (42 FR 62713) setting forth procedures for payment of reclamation fees and recordkeeping requirements. On May 15, 1978, OSM published an amendment to these rules (43 FR 20793) to establish the interest rate on late payments. These rules were later renumbered in the Code of Federal Regulations as part 870.

Section 870.10—Information collection. OSM proposes to revise § 870.10 which contains a list of the information collection requirements contained in part 870 and the OMB clearance numbers. The proposed revision updates the data contained in the section by including the estimated reporting burden per respondent for complying with the information collection requirements. The proposed revision would also provide the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Section 870.12 (Reclamation fee). A new subsection 870.12(d) would be added to specify the new termination date for the payment of reclamation fees. As originally passed by Congress in 1977, the reclamation fee obligation was for a 15-year period starting in the last quarter of 1977 and extending to September 30, 1992. Congress has extended this date 3 years through the enactment of Public Law 101–508. The reclamation fee obligation now is applicable for coal produced though September 30, 1995. As noted in H.R. Report No. 294, 101st Congress, 1st Session 17–18 (1989), the extension of the reclamation fee is based in large measure on the continuing need to address high priority coal problems. Though the AML program over that last 13 years has reclaimed a significant number of acres of abandoned lands, Congress found that the "inventory of unreclaimed high priority coal mine sites is still overwhelming." *Id* at 17.

Section 870.15 (Reclamation fee payment). An editorial change is being proposed to § 870.15(b) to note that the OSM–1 form will be amended to collect additional coal production and ownership information. Public Law 101–508 requires that additional information be reported in the quarterly report filed by operators; specific requirements include identification of the permittee, the permit number, the Mine Safety and Health Act (MSHA) number, the owner of the coal, the preparation plant, tipple, or loading point for the coal, and the purchaser of the coal.

OSM is seeking comments regarding the detail to which this information must be collected so as to insure that information that is to be collected is useful. Also, as a means of achieving Congress' intent of minimizing the reporting burden, OSM is considering the establishment of thresholds (percentage of coal purchased, or percent of mineral ownership) for purposes of determining who qualifies as a reportable mineral owner and reportable purchaser, with the requirement that each Form OSM–1, when the thresholds are not met, identify at least the largest mineral owner and purchaser.

Information contained in the quarterly reports, including information updates would be maintained in a computerized data base by OSM. In enacting these new allocation requirements, Congress believed that this information would be necessary for the agency to determine the identity of entities from whom to seek payment in the event of under- or non-payment of the reclamation fees. H.R. Report. No. 294, 101st Congress, 1st Session 26 (1989).

OSM has also proposed a minor editorial change to § 870.15(c). This modification would change the title of the current Form OSM–1 from "Coal Production and Reclamation Fee Report" to "Coal Reclamation Fee Report." This is intended to more closely reflect the rules under § 870.15(b) which require operators to report tonnage of coal sold, used, or transferred as opposed to coal produced.

The SMCRA amendments require that mine operators report changes in ownership, as well as identifying purchasers, tipples, preparation plants, and loading points as part of the quarterly Form OSM–1 process. Congress stated it did not expect these new requirements to place a significant additional reporting burden on operators.

The Form OSM–1 will be revised to incorporate the new information required by the amendments. The instructions accompanying the Form OSM–1 will set forth the new data reporting requirements, including mineral owner, purchaser, tipples, loading points, etc. As part of OSM's analysis of the new amendments for this part, the Agency conducted a study of owner/purchaser profiles in large, medium, and small coal producing companies to develop an estimate of the nature and extent of the owner/purchaser information which OSM might collect (and operators to report) as a result of the 1990 AML amendments.

OSM analyzed data from eight coal companies to determine how the amendments could impact their administrative reporting burden. The Agency gathered ownership and sales statistics for two large companies, four medium companies and two small companies in order to evaluate the potential impact of the SMCRA amendments. While the study was not based on statistical selection criteria, OSM believes that the data fairly represents the kind of owner/purchaser relationships that it would expect to encounter across the industry.

The study supports the need to establish reasonable interpretations of the terms "owner" and "purchaser" in order that the data furnished by operators to OSM is both manageable and useful. The eight companies examined represent a wide spectrum of purchaser and owner relationships. For example, during 1990, one large company in Kentucky operated its own mines, bought coal from contract miners, brokered coal representing several purchasers, and sold coal to 90 individual purchasers. Four purchasers (major public utilities) accounted for about 90 percent of its sales. The company reported 2,100,000 tons of coal sales during 1990.

In contrast, a small Colorado coal company operated a single mine. Except for one major buyer, the company sold coal on a cash basis to as many as 652 customers during a single quarter, each purchasing one ton or less. Annual sales amounted to 24,500 tons.

Another coal company located in Ohio operates eight company mines and purchases coal from seven contract miners. There are 47 permits associated with the 8 MSHA-ID's under which the company reports and pays its quarterly fees. On one permit number which OSM selected for review, there were three mineral owners registered with the regulatory authority. Similar profiles exist for other companies selected for review.

Although OSM's study was limited, the data suggests that thresholds would assure that the information collected identifies only those mineral owners and purchasers who are in a position to influence the coal operations that are reported. This would avoid a proliferation of reporting and data collection and the associated significant administrative and cost burden that would otherwise result.

On the basis of this study and other information, OSM would propose the following threshold definition of "owners" and "purchasers" for Form OSM-1.

The name and address of any person or entity who, in a given quarter, is the owner of (  ) percent or more of the mineral estate for a given permit, and any business entity or individual who, in a given quarter, purchases (  ) percent or more of the production from a given permit shall be reported to OSM on a quarterly basis. In the event that no single mineral owner or purchaser meets the (  ) percent rule, then the largest single mineral owner and purchaser shall be reported.

OSM suggests that the threshold value of 10 percent be incorporated into the above definition, and accordingly requests comments on this or other threshold values. Without thresholds, OSM believes that data reporting and collection would proliferate without significant benefit. However, by establishing reporting limits, OSM would not only minimize its own administrative burden and that of the operator, but it would assure the usefulness of the data by identifying only those individuals and entities who, by the significance of their ownership and/or purchasing power, may influence coal mining operations.

Sections 870.16 and 17 (Production records and Compliance authority). Although the regulations in § 870.16 have not been amended, OSM notes that provisions in Public Law 101-508 have clarified and ratified the Secretary's authority to conduct compliance audits of coal operators. Moreover, the provisions would require the Secretary to share information obtained through audits of coal operators with the Internal Revenue Service. In addition, the provisions in § 870.17 have been expanded and clarified, utilizing the authority in sections 201(c) and 412(a) of SMCRA, to cover all persons involved in a coal transaction, including without limitation, permittees, operators, brokers, purchasers, persons operating preparation plants and tipples, and any recipients of royalty payments for the coal. Section 870.17 currently provides that fee compliance officers have the authority to examine records of the second party involved in the sale or transfer of ownership of coal by the operator.

The amended section would no longer refer to the term "second party," and would specify that the Secretary or any duly authorized officer, employee, or representative of the Secretary would have access to relevant documents. Section 870.17 now only refers to fee compliance officers. The proposed language regarding duly authorized persons would make this section consistent with the language in § 870.16. Section 412(a) of SMCRA provides that the Secretary shall have the power and authority, if not granted otherwise, to engage in any work and to do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of title IV. Section 201(c) (1) and (2) also provides broad authority.

The legislative authority to conduct audits of coal production and the payment of fees, including tipples and preparation plants as well as the authority to have access to relevant documents of any other person involved in a coal transaction, including purchasers of coal whether or not the purchase is from one who originally produced the coal, a secondary seller or an ultimate end user of the coal is a means to provide reasonable assurance that coal operators are properly reporting coal produced and subsequently sold, used, or transferred. This authority is necessary for the agency to determine the identity of entities from whom to seek payment in the event of underpayment or nonpayment of the reclamation fees. The Agency believes that the new provisions in section 402(d)(2) of SMCRA reinforce OSM's ongoing audit activities and do not mandate any specific level of tipple or preparation plant audit. OSM auditors have always verified the AML fee payment or non-payment and the accuracy of the tonnage reported. The legislative amendments confirm OSM's interpretation of its existing authority as implemented through current regulations.

In enacting these provisions, Congress sought to provide OSM the authority to verify for accuracy and completeness the representations made in the quarterly reports. H.R. Report No. 294, 101st Congress, 1st Session 26 (1989). Moreover, through these amendments Congress provided that the Secretary report any failure to pay the full amount of the reclamation fee to the federal agency responsible for ensuring compliance with provisions of section 4121 of the Internal Revenue Code. Congress believed that this sharing of information would foster greater compliance under the Black Lung Disability Trust Fund.

*Part 872 Abandoned Mine Reclamation Fund*

The United States Department of the Treasury established an account on its books in accordance with title IV provisions of Public Law 95–87 and Treasury's rules for a fund of this type. Section 401(a) creates the authority for the account:

> There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior.

Section 401(d) delineates availability and purpose of account moneys:

> Moneys from the fund shall be available for the purposes of this Title, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations.

These provisions provide the authority for a fiduciary relationship whereby Congress controls the use of fund monies for title IV purposes by the appropriation process, and the Treasury maintains the amounts collected in a special account.

Fund revenues are derived from per-ton reclamation fees and late payment interest charges, sales of acquired lands, and donations. The fees and interest charges are paid by coal mine operators and submitted with production and reclamation fee reports for payment identification and credit through a lockbox operation to OSM's Finance Center in Denver.

Collections and related transactions are controlled by Deposit Tickets (prepared by the collection officer), Debit Vouchers issued by the Federal depository for uncollected checks, and Refund Schedules for overpayment. These transactions are identified by mine operators as well as by mine and geographic location. Data from OSM approved Forms OSM–1 submitted by mine operators with their payment are coded and stored in OSM's ADP system for compliance and disbursement purposes. Net collections (per deposit tickets, debit vouchers and refund schedules) are reconciled on a monthly basis with the amounts reported by mine operators on OSM's approved forms.

All accounts are closed at the end of business on September 30, the final day of the Federal fiscal year (FY). The System is reconciled and collections are identified by State and Indian lands. Fifty percent of the FY collection is reserved for use by States and Indian Tribes to carry on approved reclamation programs. The remainder is to be allocated or expended by the Secretary of the Interior through the Director, OSM, as set forth in section 402(g) of title IV. Any errors found in prior year allocations are corrected in current allocations. This financial information is one of the inputs for budget requests to support title IV programs.

SMCRA, as originally enacted, did not authorize the investment of the AML Fund. In the new amendments to title IV, however, Congress specifically provided for the investment of the AML fund into interest-bearing accounts.

To comply with this mandate OSM is currently developing, with the assistance of the Department of the Treasury, a cash management plan providing for the investment of AML monies not required for current withdrawals.

OSM is proposing to add a new paragraph 6 to § 872.11(a) to note that interest and any other investment income from the AML Fund would be earned and credited to the Federal share of the Fund. Options for splitting the earned interest between the State and Federal shares were not proposed because it is clear from the language of the amendments and the legislative history that Congress sought to place the interest only in the Federal share. For additional information, see the response to comments at the end of this part. Section H.R. Report No. 294, 101st Congress, 1st Session 19, 20 (1989). See amended sections 402(g) of SMCRA.

Section 872.11(b) would be revised to incorporate provisions of section 402(g) of the Act as amended by the Abandoned Mine Reclamation Act of 1990. Section 872.11(b) describes the manner in which moneys deposited into the fund would be allocated by the Secretary. These funds, once appropriated by Congress, would be used to accomplish the purposes of title IV of SMCRA.

Existing paragraph (b)(1) would be removed and allocations of funds for the Small Operator Assistance Program (SOAP) would be addressed at new paragraph (b)(5) as specified at section 401(c)(11) of SMCRA. The distribution of AML funds for SOAP would be funded from the 20 percent of the funds remaining after allocation of collections to the States/Tribes in accordance with section 402(g)(2) of the Act. The distribution of funds for SOAP would be set forth in paragraph (b)(5).

Existing paragraphs (b)(2) and (b)(3) of the regulations would be revised and redesignated as paragraph (b)(1) and (b)(2). These redesignated and revised paragraphs would continue to require the allocation of 50 percent of annual fee collections to a specific State or Tribe. This would fulfill the requirements of the Act at 402(g)(1). The new amendments use the grant award date as the time from which to calculate the three year period the States and Tribes have to use allocated funds. Monies which remain unexpended by a State or Tribe after the three year period may, under certain conditions, be withdrawn and expended by the Secretary to accomplish the purposes of title IV.

Existing paragraph (b)(4) of the regulations would be redesignated as paragraph (b)(3) and revised to require that 10 percent of the monies collected and deposited annually, and 20 percent of the interest and other miscellaneous receipts to the Fund, be allocated for use by the Secretary of Agriculture for the purpose of funding the Rural Abandoned Mine Program (RAMP). Twenty percent of funds withdrawn from the State's and Tribe's unexpended grant awards under section 402(g)(1)(D) of the Act would be reprogrammed to RAMP. This requirement would be consistent with section 402(g)(2) of the Act.

A new paragraph (b)(4) would be added to the regulations to fulfill the requirement of section 402(g)(5) of SMCRA. New paragraph (b)(4) would require that 40 percent of the monies deposited in the Fund annually after making the allocations of subparagraphs (b) (1) and (2) shall be allocated for use in making additional grants to the States and Tribes. To be eligible for funds allocated under this proposed provision, a State or Tribe would not have certified under section 411(a) of SMCRA and would have priority 1 and priority 2 problems within the State or on Tribal lands. Under this proposed paragraph, the distribution of funds would be based on a formula addressing the respective State or Tribe's historical coal production prior to August 3, 1977, as a percentage of the nationwide total for eligible States and Tribes. Also, funds to be granted under this paragraph could be reduced or curtailed under two specific conditions relating to the adequacy of funding. These two conditions are: (1) If State or Tribal share funds to be granted in a given year are sufficient to address remaining eligible priority 1 or priority 2 sites, no additional funds will be provided during that year; and (2) if the costs to reclaim all remaining priority 1 or priority 2 sites exceeds the amount of State or Tribal share funds to be granted in a year pursuant to section 402(g)(1), but is less than the total amount of funds to be granted to the State or Tribe in that year under paragraphs (b) (1), (2), (3), and (4) of this section, Federal funds granted under this paragraph will be reduced to that amount required to fully fund all remaining priority 1 or priority 2 sites after utilizing all available State share funds.

Existing paragraph (b)(5) of the regulations would be revised to list the purposes for which the Secretary may expend funds from the remaining or unallocated balance of the AML fund (not already allocated to the States, Tribes, and RAMP), in accordance with section 402(g)(3) of the Act. These purposes would include SOAP, emergency projects, nonemergency projects in nonprogram States and on Tribal lands, funding for eligible interim program and insolvent surety sites and administration of title IV of the Act.

Two million dollars is the minimum program level established at section 402(g)(8) of the Act. A new paragraph (b)(6) would also be added to the regulations to specify that not less than $2,000,000 would be distributed annually to States and Tribes having an approved abandoned mine reclamation program and eligible lands and waters pursuant to section 404, so long as an allocation of funds is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a) (priority 1 or 2 problems). However, annual State share funds must be utilized first, and supplemental funds granted under paragraph (b)(4) and this paragraph shall not exceed the costs of reclaiming all remaining priority 1 and 2 sites.

A new paragraph (b)(7) would be added to the regulations to specify that additional funds allocated or expended annually by the Secretary would not be deducted against funds granted annually to a State or Tribe pursuant to sections 402(g) (1), (5), or (8) of SMCRA.

Finally, the new statutory provisions in section 402(g)(3)(C) authorize the Secretary to expend monies for reclamation purposes in States or on Indian lands which do not have an approved abandoned mine land program. Section 872.11(b)(8) would implement this provision.

*Comments Received During Outreach—Part 872*

*Comment:* It appears from section 402(g)(A) that States will not be entitled to interest collected on State share funds. Therefore, in accordance with the requirements of section 402(g)(A) the rules should require OSM to first allocate the State's full share of their annual collections from the annual appropriation. The balance of the monies remaining in the appropriation would then be distributed in accordance with the requirements of section 402(g) as it relates to the Federal share distribution.

*Response:* Due to the uncertainty of the amount of annual collections and the level of funding ultimately appropriated by Congress for annual grants, OSM has elected not to propose a regulation which would mandate a distribution of 100% of a State's share of annual allocations. Such a proposal might jeopardize the funding levels available for other AML activities. OSM has proposed, instead, to ensure that all annual collections are allocated to the appropriate AML State or Federal accounts and that all appropriations are distributed to the States based on direction from Congress in the appropriations legislation. The amendments to title IV only mandate certain allocations of AML funds. This allocation of funds, i.e. administrative identification, however, is separate from the annual appropriation of funds and does not control how appropriated funds are specifically distributed.

*Comment:* OSM should clarify under section 402(g)(1)(C) that States can use the State share funds for property acquisition as allowed under the law.

*Response:* The amendments to title IV of SMCRA did not attempt to alter a State's ability to acquire property pursuant to section 407 of SMCRA. The preamble to the proposed regulations clarifies OSM's understanding and interpretation that section 402(g)(1)(C) would not alter the basic provisions and authority contained in title IV. Since land acquisition under section 407(c) of SMCRA is part of a reclamation effort, these activities would come within the scope of a "reclamation project construction" as used in section 402(g)(1)(C) of SMCRA.

*Comment:* Section 872.11(b)(5) discusses discretionary share allocations to States for additional grants. The proposal suggests that allocations would only be made for priority 1 and 2 coal problems. However, the amendment language specifies that such allocations would be made "* * * based on the amount of coal historically produced in the State * * *". These supplemental grants are to be available "* * * until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved by such State * * *". The amendment does not say that such funds may only be expended on Priority 1 and 2 problems as suggested in the summary. I do not believe the intent of the legislation is being interpreted correctly in this case.

*Response:* The regulations, as proposed under section 872.11(b)(4), would authorize the use of the historic coal production allocation for reclaiming only priority 1 and 2 problem sites. OSM believes this proposal would be consistent with Congressional intent that the AML program address the highest priority coal projects first before lower priority problems are reviewed. The new amendments specifically state that such funds are to be available to a State only until all of its priority 1 and 2 problems have been addressed. If such monies could be used for lower priority problems as suggested, there would be no way to guarantee that monies would ever be used to address the most dangerous problems facing the public.

*Comment:* Section 872.11(b)(6) would provide for the distribution of emergency funds, and points out that expenditures would not be used to offset future allocations. This change heightens my concern about the eventual allocation mechanism for emergency program states. How will states be able to depend on an adequate source of funding to address emergency situations as they develop? Emergency program funds under the amended Act will apparently be quite limited, so a realistic and equitable allocation mechanism to the emergency program states will become extremely important. In the FY–91 allocation package, emergency program allocations, which increased greatly over FY–90, were listed without any explanation regarding the derivation of the amounts. Without a corresponding adjustment, every state receives less discretionary share money as a result.

*Response:* Section 410 of SMCRA authorizes the Secretary to conduct emergency reclamation activities. Although OSM has enlisted the assistance of several States in carrying out the emergency reclamation activities, OSM is still ultimately responsible for ensuring that adequate funds are available to meet this responsibility. The new amendments have not altered this basic fact. OSM is committed to meeting its responsibilities under the Act and will work closely with Congress and the States to ensure that the emergency program has the necessary funds to carry out its task.

*Comment:* It appears that OSM has correctly identified the balances on which interest should be paid, however, we disagree with having that credited to the Federal share only for a number of reasons. Title IV as amended at 401(e) very clearly states that interest is to be credited "to the Fund." Section 401(a) identifies the "fund" as a trust fund administered by the Secretary of the Interior with no distinctions of "Federal share" or "State share." The legislative history for these title IV amendments is inconclusive with some of it recommending that interest accrue to the Federal government and some recommending accrual to the States. Further evidence that crediting interest to the Federal share only is inappropriate lies in the fact that 70% of the unappropriated balance is State share. We note that this proposal gives no assurance that the interest will come back to the individual states which have forgone the immediate use of AML reclamation fees. The AML Association was also one of the prime movers for making the fund interest-bearing as evidenced by a 1989 resolution. For these reasons this option should credit interest to Federal, State, and Tribal share balances.

*Comment:* We believe that the interest should be credited to the Federal share only and would be paid on the appropriated but unspent balance and the unappropriated balance. Section 402(g)(1) of the Act with amendments effective October 1, 1991 states that 50 percent of the reclamation fees collected annually shall be provided annually to the States/Tribes. It does not state that interest shall be included in that allocation. However, section 402(g)(2), when stating that 20 percent of the Federal share shall be allocated to RAMP, states "including that interest accruing as provided in section 401(e) * * *". It is clear from this language that the interest is to be credited to the Federal share. This is consistent with the intent of this legislation, as originally developed in H.R. 2095, that the interest generated would offset the expanded programs funded with Federal share funds, i.e. RAMP, interim reclamation, AMD fund, water supply program, minimum programs, etc. Conversely, if Congress had meant for the State/Tribal share to include interest, they would have included that language in 402(g)(1).

*Response:* OSM has proposed to credit the interest earned from the investment of the AML fund to the Federal share for three specific reasons. First, the specific language of the new amendments credits to the State share balances only 50% of the AML fees collected. It does not include interest. Second, the legislative history appears very clear that Congress directed the monies to go solely to the Federal share. For example, the following three excepts from the House Report accompanying H.R. 2095 (the legislation which formed the core of the title IV amendments) clearly specify how interest income is to be distributed:

> The remaining 50 percent of reclamation fees collected would continue to be dedicated to the Secretary's discretionary share of the Abandoned Mine Land Reclamation Fund for Federal programs. However, the legislation provides for the Secretarial share to be augmented by interest authorized to accrue to the unappropriated balance in the entire fund.

H.R. Report Number 294, 95th Congress, 1st Session 19 (1989).

> Under the bill, after allocation of the State and Tribal shares, the remaining amounts in the Fund (the Secretary's share of the reclamation fees plus all interest which would accrue to unappropriated balances as authorized by legislation) would be available for a number of current Federal Title IV programs.

H.R. Report Number 294, 95th Congress, 1st Session 20 (1989).

> The Committee further notes that while interest would accrue to the entire unappropriated balance in the Fund, amounts earned from this interest would be dedicated solely to programs financed under the Secretarial share of the Fund.

H.R. Report Number 294, 101st Congress, 1st Session 27 (1989).

Third, although interest income is credited to the Secretarial share, the States would ultimately be the beneficiaries since the Secretarial share is used in many instances to assist the States, i.e. emergency reclamation activities, Small Operator Assistance, and reclamation of interim program sites.

*Comment:* Section 872.11(b)(5) would be amended to provide for additional grants to the States for eligible priority 1 and 2 coal problems. Twenty percent of annual collections would be allocated to this purpose. Distribution would be determined from a formula based upon historical coal production prior to August 3, 1977. This section also would require that each eligible State or Tribe receive a minimum of $2,000,000 annually as long as that level of funding is necessary to complete all known priority 1 and 2 projects. Several States voiced concern with minimum program funding coming from the Secretary's 402(g)(5) portion, i.e., the "historically allocated 20% share." The amendments to title IV are silent on where funding for minimum programs is to come. The interest that will be credited to the Federal share should be used to help fund these programs through section 402(g)(3).

*Response:* Based on the comments received from OSM's outreach effort, there appears to be some confusion regarding the source of funds that would be used for minimum program States. The proposed regulations to title IV would be consistent with Congress' directive in section 402(g)(8) of SMCRA that the Secretary provide annually not less than $2,000,000 for expenditure in each State, so long as such funds are necessary to achieve the top two priorities stated in section 403 of SMCRA (i.e. projects relating to public health or safety). The $2,000,000 level for a minimum program State would be achieved as follows. First, OSM would ascertain whether State share funds plus mandatory historic coal production funds would equal or exceed the $2,000,000 level. If such funds equal or exceed that level, no additional funds would be required. If such funds are under that amount, the Secretary would use non-dedicated Federal share monies to make up the difference. This additional amount or "difference" would not be taken from the historic coal production allocation. If additional funds were taken from this source, it would possibly violate Congress' directive that these funds be allocated based only on a historic coal production formula. Since the granting of funds for minimum program States is mandatory, annual grants for this purpose would reduce the total amount of funds available in each appropriation for State grants. However, OSM notes that the historic coal production allocation would be granted only if there are priority 1 and 2 projects remaining to be funded. Moreover, funds allocated under this provision would never exceed the cost of reclaiming known priority 1 and 2 projects. This means that OSM would take into consideration the funding available under the State share allocation before determining the exact amount necessary to allocate from the historic coal production share. Thus, in the event a State has only a limited number of priority 1 and 2 projects remaining and such projects can be funded from monies distributed from the State share allocation, the State would no longer qualify for monies distributed from the historic coal production allocation. Moreover, since additional monies would not be required to reclaim priority 1 and 2 sites, the State would no longer qualify for minimum program funding. Since minimum program funding is provided to address the highest priority problems, OSM specifically is requesting comments on whether or not a minimum program State/Tribe should fund a priority 3 project, even when associated with a priority 1 or 2 problem, prior to completing all known priority 1 and 2 projects.

## Part 873 Future Reclamation Set-Aside Program

In 1987 Congress amended section 402(g)(3) of SMCRA authorizing States to deposit up to ten percent of their annual State-share grant funds into special trust accounts. Such funds deposited, together with any interest earned, could then be utilized by a State after August 3, 1992, to carry out the purposes of Title IV. The purpose behind the 1987 provision was to ensure that a State would have AML funds available after the expiration of the AML fee provisions to handle future reclamation problems in the State.

The new statutory amendments in Public Law 101–508 also include a future reclamation set-aside program with five specific differences. First, this new set-aside program does not supersede or transfer State funds deposited under the original set-aside program established in 1987. Funds deposited under that program can still be utilized by a State at its discretion after August 3, 1992 to carry out the purposes of title IV. Second, the new trust fund accounts have a new time-frame. Funds deposited pursuant to the amendments of 1990 may only be utilized after September 30, 1995. Third, the new trust accounts would only be utilized to reclaim eligible coal problems. The original State set-aside accounts could be used for any purpose in Title IV; thus both coal and noncoal problems could be addressed. Fourth, rather than being limited to up to ten percent of the State-share funds granted annually, the States can now deposit up to ten percent of the total State-share and historic coal production (Federal share) funds granted annually. Fifth, the State now has an option on whether to utilize funds for the future reclamation set-aside program or to deposit the monies in a special trust account for use in a State acid mine drainage program. The statute and regulations allow States to utilize available funds for either the acid mine drainage program or the future reclamation set-aside program. However, a ten percent cap is placed on the total funds available annually.

Section 873.1 (Scope). This section would provide that provisions of this Part would apply only to the granting of funds and their use by the States for coal reclamation purposes after September 30, 1995.

Section 873.12 (Future reclamation set-aside program fund criteria). This section tracks the legislative language of Congress and would limit the use of the monies to eligible coal reclamation purposes after September 30, 1995. To be eligible to receive a grant for such purposes, a State would have to first establish a special trust fund account which would limit the use and withdrawal of the funds as specified earlier.

If the conditions are met and monies are properly deposited, § 873.12(c) would specify that the monies so deposited, together with interest earned, would be considered State monies. The 1987 amendment originally establishing the special State set-aside specified that monies deposited in the special State trust accounts, as well as interest earned, would be considered State monies. Although the 1990 amendments do not contain equivalent language, OSM intends to provide the same treatment under these proposed rules because the legislative history to the 1990 Act does not evidence Congressional intent to change this feature of the set-aside.

*Comments Received During Outreach—Part 873*

*Comment:* New § 874.12(e) would provide that States may set aside up to 10% of the total amounts of grants in any year under § 872.11(b)(2) and 872.11(b)(5) into a fund for use after the expiration of the fee collection provisions of the Act (September 30, 1995). This 10% must be reduced by any amount set aside under new part 876 of these regulations. Beginning on October 1, 1991, the set aside amount can be used only for coal reclamation. It would be necessary for States to account separately to insure funds are spent in accordance with the applicable provisions. States may draw interest on this set-aside fund. Because of the modifications section 411 makes to section 403(a), States that have certified completion of coal problems should be able to use the set-aside funds under 402(g)(6) for either coal or noncoal problems after September 30, 1995. This section should also clarify that the 10% reference is to 10% of all monies granted to a State.

*Response:* The proposed regulations and the preceding preamble discussion clarify the issues surrounding the future reclamation set-aside program. Specifically, the original set-aside program, as established by Public Law 100–34 (1987), amending section 402(g)(3) of SMCRA, specifies that monies deposited in a special reclamation trust fund may be used by the State to carry out the purposes of title IV (this would include both coal and noncoal) after August 3, 1992. A State may establish a trust fund and allocate monies for these purposes until October 1, 1991. This is the effective date of the new amendment which establishes a totally different trust fund. Thus, after October 1, 1991, there would no longer be authority to place additional monies in the original trust fund. The original trust fund requirements would still exist, however, independent of any title IV provisions and would control how such monies could be used. According to these requirements, monies would only be available after August 3, 1992.

As mentioned above, the new amendments establish a new future set-aside trust fund. This trust fund would be utilized only for coal purposes (see section 402(g)(6))(i.e. amounts are to be expended by a State solely to achieve the priorities in section 403(a)), and funds would be available only after September 30, 1995. Some commenters have urged OSM to propose that these monies should be available for both coal and noncoal activities. OSM's proposal would be limited solely to coal, however. This limitation, OSM believes, would be consistent with the intent of Congress. As stated in H.R. Report 294:

> Provision is made for a State to deposit up to 10% of its annual state share allocations, including amounts available to the State from Secretarial share supplemental grants, into a special interest-bearing trust fund established by the State for the purpose of *undertaking abandoned coal mine reclamation projects* . . . (emphasis added).

H.R. Report 294, 101st Congress, 1st Session 28 (1989). The modifications made to Section 403(a) do not expand this authority. These modifications merely cross-reference another set of priorities which would be applicable to a State's noncoal program.

Commenters have also requested that the regulations clearly specify that the 10% reference is to 10% of all monies granted to the State. OSM's proposed regulations include this clarification by providing that a State may utilize up to 10% of the funds annually granted to a State from its State-share and the supplemental historic coal production funds.

## Part 874 General Reclamation Requirements

Part 874 sets forth requirements relating to eligibility and selection of reclamation projects that are equally applicable to those reclamation activities to be carried out by OSM and to the Rural Abandoned Mine Program administrated by the Secretary of Agriculture under title IV.

SMCRA, as enacted in 1977, specified that lands and water eligible for reclamation funding are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment (August 3, 1977) and for which there is no continuing reclamation responsibility under State or other Federal law.

The new amendments to title IV significantly enlarge this original eligibility criteria. Most notably, Congress has extended in two instances the eligibility criteria for reclamation funding to priority 1 or 2 problems on lands which have been mined and abandoned after August 3, 1977. The first time interval involves land mined and abandoned between August 4, 1977 and the date on which the Secretary approved a State program under section 503 of SMCRA and specifies that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source must not be sufficient to provide for adequate reclamation or abatement at the site. The second time interval would extend eligibility to lands mined and abandoned between August 3, 1977 and November 5, 1990, where the surety of the mining operator became insolvent and funds immediately available from other proceedings or sources are not sufficient to provide for adequate reclamation or abatement at the site. Both types of sites are eligible for funding under section 410 of the Act.

To be eligible for funding, lands adversely affected during either time interval as specified in subsection (d) must be both abandoned and qualify as a priority 1 or 2 problem pursuant to section 403(a) of SMCRA.

Subsection (e) would establish the eligibility criteria for States to reclaim lands adversely affected after August 3, 1977. It is similar to subsection (d), and includes the same criteria with one additional requirement. In addition to making the findings required for subsection (d), a State would also have to find in writing that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water adversely affected prior to August 3, 1977 and that the site qualifies as a priority 1 or 2 site.

In extending eligibility to high priority sites left abandoned after August 3, 1977, Congress noted that tens of thousands of acres of land mined since August 3, 1977 remain unreclaimed due to the less stringent standards applicable during the "interim program" period and the bankruptcies of the mining companies and their insurers. The damage to these lands has created a new generation of abandoned mine problems unforeseen by the original law. Indeed, Congress notes in its report on H.R. 2095 that the public health and safety threat posed by these acres may exceed those of eligible but lower priority pre-August 3, 1977, sites. H.R. Report No. 294, 101st Congress, 1st Session 24 (1977).

Although not part of the new amendments passed by Congress in 1990, the Secretary is utilizing his rulemaking authority granted under section 412(a) of SMCRA in proposing two additional subsections to § 874.12. Subsection (f) would provide that any monies recovered or available from other sources to reclaim sites abandoned after August 3, 1977, should be utilized either to offset the cost of the reclamation or transferred to the AML Fund. This would ensure that monies available for reclamation purposes are ultimately used for such purposes and not lost due to the intervention of Title IV activities. The operative language in the new amendments states that "available funds are insufficient to reclaim" the lands. This language addresses only availability and does not specifically state that the monies must be utilized. Subsection (e) would resolve this ambiguity by requiring that the monies either be used to reclaim the land or transferred to the AML Fund.

Subsection (g) is similar to the intent and purpose of Subsection (e) in that it would try to prevent unjust enrichment. This Subsection specifies that a person liable for reclamation expenses under a provision in Title V of SMCRA would not be relieved of his reclamation responsibilities if the lands were reclaimed under the title IV program. This would ensure that a party liable for the reclamation damages would not evade his legal and financial responsibilities to reclaim the land. Further, this subsection specifies that neither the Secretary nor a State performing reclamation on these sites would be held liable for any title V violations, whether they occur before, during or after the reclamation and that the reclamation activities need only comply with the AML Final Guidelines for Reclamation Programs and Projects (45 FR 14810–14819, March 6, 1980). These requirements should protect the public health and safety, a State project, or the Secretary from potential liability and provide the State flexibility to utilize its scarce revenues in the most efficient manner.

Section 874.13 (Reclamation objectives and priorities). This section sets forth the reclamation priorities listed in section 403(a) of the Act. The provisions in this regulation would be expanded and clarified. Subsection (a), like the original § 874.13, would specify that reclamation projects, as applicable, should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Program and Projects" (45 FR 14810–14819, March 6, 1980). Subsection (b) would specify that the priority in section 403(a) of the Act be followed. Subsection (b) would also include one additional requirement not found in the original regulations. This requirement would ensure that AML Fund monies would be utilized to address the highest priority problems before lower priority problems are approached. As Congress noted in H.R. Report No. 294, accompanying H.R. 2095,

> The primary reason for H.R. 2095, as amended, is to continue reclamation fee collections for a period beyond 1992 in order to provide the resources necessary for the reclamation of abandoned coal mine lands. While the bill maintains much of the current law's basic structure, such as the Act's commitment to State primacy in dealing with abandoned mine problems, it would make a number of improvements to the existing program. Perhaps the most noteworthy is the legislation's focusing of the Fund's resources to combating the most high priority problem areas.

H.R. Report No. 294, 101st Congress, 1st Session 23 (1977).

To implement the directive that scarce AML resources be directed to the highest priority problems, OSM is proposing a new requirement in subsection 874.13(b) specifying that lower priority projects (priority 3 or below) may only be undertaken if (1) all higher priority projects contained in the AML inventory have been addressed or are in the process of being reclaimed (i.e. included in a current grant request) or (2) where such lower priority projects are undertaken in conjunction with a priority 1 or 2 site.

If a lower priority project is included as part of a higher priority project, a State would have to specifically address in its grant application its rational for the combination and analyze the relative costs involved in addressing the problems separately or jointly. The Secretary would scrutinize such discussions closely to insure that the major purpose behind the total project is the elimination of a high priority project and that the inclusion of a lower priority project is necessary due to cost savings (i.e. equipment already on site), there is a present need to address the problem to avoid greater and more costly problems in the future, or unique local or regional environmental conditions require the reclamation of the lower priority site (i.e. during rainy season a State may be unable to utilize heavy equipment needed to address higher priority projects). Additional guidance concerning the reclamation of lower priority projects in conjunction with the reclamation of higher priority projects is found in OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980).

Section 874.14 (Utilities and other facilities). This section sets forth the requirements for funding water projects, including the protection, repair, replacement, construction, or enhancement of facilities relating to water treatment, supply or distribution. In the 1990 amendment to SMCRA, Congress specifically recognized the severe public health hazards that are associated with water supplies contaminated by abandoned coal mine workings. As pointed out in the Committee report accompanying H.R. 2095:

> For many areas of the Appalachian Region groundwater resources used for household water supply have been contaminated as a result of drainage from abandoned underground and surface mines. The Committee strongly believes that when abandoned mines have degraded groundwater quality or depleted groundwater quantity to such an extent that citizens no longer have an acceptable supply, an adverse impact on health, safety and the general welfare is self evident.

H.R. Report No. 294, 101st Congress, 1st Session 24 (1989).

To ensure that a proper emphasis is given to water projects which protect the public health and safety from the adverse effects of past mining, Congress enacted legislation, as part of Public Law 101–508, which would authorize States with eligible coal problems to expend up to 30 percent of the funds granted annually to the State or Tribe for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by past coal mining practices. Moreover, to ensure that such water projects are not unduly denied because of the existence of other water contaminants from non-AML sources or from post-August 3, 1977 mining, Congress directed that such projects would remain eligible for funding despite these other pollution sources if the States or Tribes find that the adverse effects to the water supply are due predominantly to effects of mining practices undertaken and abandoned prior to August 3, 1977.

Section 403(a) establishes the objectives of the AML Program including the prioritization of problems to be considered for reclamation. These priorities have not been significantly affected by the 1990 amendments. The first two priorities involve the protection of the public health, safety, and general welfare from the adverse effects of past coal mining. The third priority focuses upon the restoration of land, water resources, and the environment, and the fourth priority upon AML reclamation research. The fifth priority specifically addresses public facilities. While water supply systems normally would be considered a sub-category under public utilities, actions to repair, replace, or construct a water supply may qualify as a priority 1, 2, 3, or 5 problem.

AML projects which protect, repair, replace, construct, or enhance public facilities, including water supply systems adversely affected by mining practices generally would be considered a priority 5 project. The 1990 amendments did not alter the original priority listings. To qualify as a higher priority project, however, a State would have to demonstrate that a water supply system has been significantly affected or damaged by impacts associated with abandoned mine lands and that such predominate AML impacts generate health and safety problems to the users of the water supply system.

OSM will continue to scrutinize the scope of proposed water supply projects to ensure compliance with the Act. If it is not necessary to protect the public health and safety, the water supply project would still be considered a priority 5 project. To make a priority determination, OSM would look at such factors as:

(1) The extent to which the problems associated with the water supply system resulted from deterioration through aging of facilities due to lack of normal or routine maintenance or replacement (e.g. sewer lines, dam sedimentation, pumping facilities.)

(2) The degree to which the AML problems affected the water supply system. A direct causal connection between mining practices and damage done to a water supply system is not always clear. Such other factors as public use, weather, materials used, method of construction, or other pollution uses may also have contributed to the degree of damage (e.g. a water supply system may be affected by industrial, agricultural or public waste, agricultural sedimentation, or active mining).

(3) The extent to which the AML project is limited to the restoration of water service to the same number of persons originally served or adversely affected. An enhanced water supply project for a new population or service district not adversely affected by past coal mining problems would not qualify for funding. Costs associated for extending water services to communities not affected by AML problems would have to be paid for from non-AML sources.

(4) Where repair or replacement of a water supply system is incidental to abatement or reclamation of an AML problem, the project might qualify as a priority 5 project if the corrective work is necessary and it is the most cost-effective way of solving the AML problems.

As general guidance, construction or repair of a water system may be classified as either a priority 1 or 2 project if:

• The quality of the water supply is a public health hazard;

• The problems with the water supply source are predominately the result of eligible AML problems;

• Reclamation or abatement of the AML problems compared to construction of a water supply system is not cost effective or will not solve the problem; and

• The construction of the water supply system will eliminate or greatly minimize the existing danger to the public.

For those instances where the AML problem is not the predominate cause of the degraded water supply, AML funding for the project would be reduced to reflect that percentage of the project which represents the percentage damage caused by the AML problems.

To reflect the new provisions regarding the funding of water projects, OSM is proposing to promulgate a new § 874.14. Subsection (a) would provide that a State not certified under section 411(a) of the Act may expend up to 30 percent of the funds granted annually to such State or Indian tribe for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by past coal mining practices.

Subsection (b) would modify the eligibility standards in section 404(a) of the Act and 30 CFR 874.12(b) of the implementing regulations by stating that the water supply projects would remain eligible if the State or Indian tribe found in writing that the adverse effects to the water system processes are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

Subsection (c) would set forth OSM's criteria for providing funds not only to repair or replace existing facilities but also to enhance them. These criteria are proposed under the Secretary's broad grant of authority in Section 412(a) of SMCRA and from his trust responsibilities regarding the AML fund to ensure that its funds are used to reclaim eligible lands and water.

In order to receive monies to enhance public facilities, States would have to demonstrate and the Director concur in the finding that: (1) Monies from other sources are either not available or such other sources are contributing their fair share of construction funds, (2) there is an urgent need to undertake the project which gives it the same or higher priority than projects remaining, and (3) the enhancement of the facility is necessary to achieve the objectives set forth in Title IV of SMCRA.

Finally, a new subsection (d) would be added stating specifically that an enhancement of a facility or utility would include upgrades necessary to meet local, State, or Federal health, safety or other applicable code requirements. For example, access ramps for handicapped individuals would be eligible improvements. Enhancement would not include, however, any areal expansion of the utility or facility which is not necessary to address a specific AML problem. For example, if a water system is damaged by subsidence, a State could possibly increase the size of the replacement pipes for the water system and thereby increase the carrying capacity. The State, however, would not be allowed to extend the water system to an area or town not adversely affected by the AML problem. OSM is very concerned about the issue of "enhancement" and specifically requests comments regarding the scope of this term.

A new § 874.15 (Limited liability), reiterates the language of section 405(1) of SMCRA which mandates that no State or Indian tribe shall be liable under Federal law for any costs or damages as a result of any action or omitted action while carrying out an approved abandoned mine reclamation plan. This section, however, does not preclude liability for gross negligence or intentional misconduct by a State or Indian tribe. OSM intends to conduct discussions with the Environmental Protection Agency (EPA regarding the funding of projects which may be eligible under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). At a minimum, OSM would not approve funding for any project which might affect EPA's responsibilities until EPA had been consulted.

*Comments Received During Outreach—Part 874*

*Comment:* "New § 874.12(d)(2) would establish eligibility for reclamation sites disturbed and abandoned after August 3, 1977 consistent with section 402(g)(4)(B) of SMCRA. Only priority 1 and 2 sites would be eligible. This section could address whether or not outstanding title V violations would have to be abated." States' concerns with this section are primarily with having these new sites eligible for reclamation under title IV being held to title V standards. Requiring reclamation to title V standards could raise costs beyond AML programs' resources. Civil penalty sites and bond forfeiture sites reclaimed through AML programs currently use title IV guidelines from 1989 and 1980 respectively. Requiring abatement of title V violations could be inconsistent with the priority 1 and 2 restriction if the violations do not fit those priorities. It is appropriate to vacate any remaining title V violations so questions about remaining title IV responsibility do not remain. The regulations should be very specific that AML programs will not be held liable for pre-existing title V violations. Additionally, although a tracking system may be appropriate, the system should be outside of the National Abandoned Lands Inventory because sites are not pre-1977.

*Comment:* The sentence of this paragraph which addresses title V should be deleted. Title V liabilities should continue to be assumed by the title V program and should not be assumed by the title IV program.

*Response:* Several commenters have raised concerns regarding the reclamation standards that would be applied to sites adversely affected after August 3, 1977. Since these sites represent violations of SMCRA standards, there was a concern that any reclamation efforts would have to comply with all performance requirements and reclamation standards specified in title V and that any failure to meet such standards would subject a State to potential liability.

The proposed regulation would clarify that the operator, not the AML authority, would be responsible and would remain responsible for the degraded site. Although the AML program may attempt to lessen the danger to the public, its activities would be governed only by the AML program's reclamation guidelines and not by any external title V standards. To mandate more would be to unduly hamper the effectiveness of the AML program and its ability to utilize its limited resources to their fullest benefit. In some cases this may mean that certain sites are not fully reclaimed; in other instances, only the danger to the public health and safety may be abated. Decisions regarding the scope of reclamation would be the responsibility of the reclamation authority based on public comments and discussions with the affected parties.

Although more restrictive regulations could have been proposed, such options might deter States from reclaiming title V sites due to the costs and responsibilities involved. Accordingly a less restrictive, more flexible option was proposed.

Commenters also have suggested that the proposed regulation should specify that sites adversely affected after August 3, 1977 not be made a part of the AML National Inventory. OSM does not contemplate that any post August 3, 1977 sites would be made part of the National Inventory. Since the selection of these sites is a discretionary matter with the State, OSM would track and account for these projects separately from the AML National Inventory.

*Comment:* Our position is that each State would determine "interim program" and "insolvent surety" reclamation standards. This, then, would allow each State the flexibility that is so necessary in given political and economic environments.

*Response:* Section 405(c) of SMCRA specifically provides States the exclusive responsibility to implement the provisions of its approved program. Under the proposed regulation States would retain the flexibility in such matters as the "insolvency of sureties" and the selection of eligible post-SMCRA sites.

*Comment:* The regulation language should state that interim program sites are those that mining occurred between August 4, 1977 and the date of State primacy. The congressional language (Section 402(g)(4)B(i)) does not state that the mining had to *end* on or before State primacy date.

*Response:* The proposed regulations and preamble discussion clearly provide that in order for interim program sites to be eligible all mining must have ceased and the lands left in an inadequate reclamation status between August 4, 1977 and the date of State primacy.

*Comment:* New § 874.12(f) would permit up to 30 percent of the funds granted under § 872.11(b)(2) and 872.11(b)(5) to be used to protect, repair, replace, construct, or enhance facilities relating to water supplies, including water distribution facilities and treatment plants. This subsection would apply to sites with adverse effects that occurred both before and after the Act was passed so long as the predominate effect occurred prior to the Act. The section would also address the meaning of "enhancement". The amount of funds available should reflect funds "allocated" rather than "granted" in order to be consistent with the title IV amendments.

*Response:* The proposed regulations specify that a State may utilize up to 30 percent of the funds granted annually under section 402(g)(1) and (5) of SMCRA to protect, repair, or replace facilities relating to water supply. OSM has not adopted the proposal that the 30 percent figure be determined from monies "allocated" annually. Allocated in this sense would represent both appropriated and unappropriated monies. The language in section 403(b) of SMCRA, however, provides only that the figure should be up to 30 percent of the funds "allocated through the grants". That is, up to 30 percent of the "appropriated grant" funds.

Another commenter has requested that OSM include language in its proposed regulations that would define "enhancement" of a water system to entail at least minimal upgrading to meet current and local codes. This language has been specifically set forth in the regulation. OSM believes that such minimum upgrading obviously falls under the scope of section 403(b). Neither OSM nor the States would be allowed to construct or protect facilities through designs which did not meet applicable local and State building or water codes. To do less would be to violate State law.

*Comment:* "Section 874.13 would be revised to provide that problems lower than priority 1 or 2 would not be undertaken unless they are done in conjunction with a priority 1 or 2 site, and they cannot otherwise be done until all problems on the inventory are completed." This issue raises two questions affecting States' ability to undertake associated priority 3 work: (a) Could States be forced to leave priority 1 and 2 sites on their inventory and (b) Could States delete or lower the ranking of priority 1 and 2 sites without OSM approval?

*Comment:* We agree that this proposed language is necessary. The regulations should require that all health and safety problems be taken care of before any other problems are addressed in a State. This intent is obvious through the legislation and specifically stated in section 402(g)(4) and 402(g)(5).

*Response:* OSM's proposed regulation would specify that a State could only undertake low priority projects if it had completed all priority 1 and 2 work or the lower priority project was done in conjunction with a higher priority project. If the regulation is promulgated, as written, OSM could refuse to grant monies for a project unless the above requirements were met. This requirement, OSM believes, would be consistent with Congress' directive toward focusing AML resources to combating the most high priority problem areas. H.R. Report No. 294, 101st Congress, 1st Session 23 (1989).

In the past, several States have elected to skip over certain priority 1 or 2 projects in order to address a lower priority problem. This practice would no longer be allowed. If a State has a priority 1 or 2 project, all available monies would have to be utilized to address them. This would mean that a State would not be permitted to leave a priority 1 or 2 site on the inventory in order to perpetually qualify for additional monies under section 402(g)(5) or (8).

One commenter questioned whether a State could delete or lower the ranking of a project without OSM approval. The AML National Inventory is maintained by OSM and therefore any updates or deletions must be done by and with the agency's approval.

Finally, a commenter has suggested that the proposed regulation should refer to the March 1980 AML reclamation guidelines. See 45 FR 14810–14819, March 6, 1980. Reclamation projects would continue to be accomplished in accordance with the AML reclamation guidelines. These guidelines, however, would not overrule this regulatory provision requiring the selection of priority 1 or 2 projects.

Part 875 Noncoal Reclamation

Part 875 sets forth the requirements for reclamation of noncoal mined lands and water conducted under title IV of SMCRA by State and Indian Reclamation Programs. As enacted in 1977, OSM is proposing to alter the contents of several provisions and to add additional subsections to reflect Congress's new directive regarding the funding of noncoal projects. Sections 875.1 and 875.11 are not being revised. In essence Congress has created a two step or tier process for addressing noncoal problems. Prior to a State completing all of its known coal problems, Congress has limited a State's ability to do noncoal work. This is shown in § 875.12. A State desiring to implement a greatly expanded noncoal reclamation program (see §§ 875.14–19) or what could be called the second tier or level, would first have to certify that it had completed all known coal problems and the Director would have to concur in the State's finding (see § 875.13).

Section 409 of SMCRA, as enacted in 1977, authorized States and Indian tribes to undertake noncoal reclamation activities if: (a) The Governor of a State or the chairman of an Indian tribe requested funding and the State had either completed all known coal reclamation objectives or (b) if coal problems remained, the project, for which funding was requested, was necessary to protect the public health and safety. The Secretary has no independent authority to undertake noncoal reclamation activities, and only the States and Indian tribes, utilizing AML funds allocated pursuant to section 402(g)(2) (as amended in 1990—this section would now be section 402(g)(1)), could carry out such tasks.

In 1982 OSM established the eligibility criteria for noncoal projects utilizing its rulemaking authority under section 412(a) of SMCRA. Essentially, the eligibility criteria that applied to coal was also applied to noncoal. OSM had reviewed the legislative history of section 409 and concluded that Congress intended the eligibility requirements for noncoal reclamation be consistent with the statutory eligibility requirements contained in section 404 of SMCRA that applied to coal mined lands and waters. Since the source of the funds for all reclamation conducted under title IV of SMCRA comes from a fee collected from coal mine operators, less stringent requirements for noncoal reclamation cannot be logically justified in fairness to the coal mine operators. Moreover, there is no basis in the legislative history of section 409 (30 U.S.C. 1239) to justify a conclusion that Congress intended to allow funding for reclamation on noncoal mineral lands and water abandoned after August 3, 1977.

The noncoal regulations did not contain a definition of what constituted a threat to the public health and safety (i.e., in order to receive funding for a noncoal project prior to the completion of all coal problems) nor did they explicitly establish a formal procedure to follow regarding the transition from a coal reclamation program to a noncoal reclamation program.

As to the issue of what constituted a threat to the public health and safety, OSM did establish a policy providing that: (a) There must be a clearly definable threat; (b) the threat must present a danger that results in a high probability of serious physical harm to the health or safety of people; (c) the threat cannot await resolution until all coal projects have been completed; (d) the project must be necessary and appropriate to abate, control, or prevent the threat, and (e) there is no private party legally responsible under any other Federal or State law to abate, control, or prevent the threat.

Similarly, in regards to a State's transition to a noncoal program OSM established a procedure requiring a specific review of a State's finding prior to funding noncoal projects. The significant features of the procedure were: (1) coordination with the State regarding how its finding that all coal problems had been addressed; (2) notification of the public, through publication in the Federal Register, regarding the State's finding of the completion of all coal problems and/or specific request for comments; and (3) assuring no known coal problems are unaddressed and an agreement with the State that if eligible coal problems occur in the future, the State would give such projects its highest funding priority.

OSM has in the past provided flexibility to the States in making the finding that all known coal problems have been addressed. This was done in two specific ways. First, OSM did not order an independent analysis of the State's certification since such an analysis would not only be time consuming and costly, but it could cause an unnecessary disruption of the efficient allocation of funds to the State. (i.e., no monies would be granted to a State until a study had been completed). Second, the Secretary did not require that all coal projects actually be completed; rather, it was sufficient that all coal problems had either been addressed or were in the process of being addressed through a current grant application. Again, the rationale for not waiting until the coal projects were completed was to avoid, as much as possible, an interval where the State's administrative staff would be idle awaiting the completion of one final project. OSM believes this process was in accord with the Congressional mandate in section 405(d) granting the State "exclusive responsibility and authority to implement the provisions of its approved program."

Such flexibility, OSM believed, was warranted since it provided for the efficient utilization of funds and personnel and did not jeopardize the State's ability to address any coal problems which might have been missed or might arise in the future. In order to obtain the Secretary's concurrence that all known coal problems had been addressed, a State would have to agree to give any coal problem which might arise in the future its top funding priority. Thus, the transition from a coal program to a noncoal program did not jeopardize the fund for future coal reclamation and allowed States flexibility in how they utilized their funds and planned for the transition.

The new amendments to title IV, enacted in 1990, significantly affect how and when a State undertakes noncoal reclamation activities. There are eight major provisions.

First, prior to the completion of all coal problems, a State now can undertake only noncoal projects which protect the public health, safety, general welfare, and property from the extreme danger of the adverse effects of mining practices. In other words, a priority 1 type of project (see 403(a) of SMCRA).

Second, the new amendments specifically adopt the same eligibility requirements that are applicable to coal reclamation work.

Third, following certification by the State of the completion of all known coal problems and the Secretary's concurrence, the State may establish a noncoal reclamation program which utilizes the top three priorities applied to coal projects (extreme danger, danger, and environmental—Section 411 (c)); establishes eligibility criteria for lands and water which are similar in most respects to the criteria originally enacted in Section 404 of SMCRA in Public Law 95–87; and utilizes the same lien requirements and land acquisition authorities that would be applicable to coal.

Fourth, Congress specifically expanded the scope of funding involving projects relating to the protection, repair, replacement, or enhancement of facilities utilized by the public which are affected by coal or noncoal mining activities.

Fifth, Congress adopted language which would allow the Secretary to approve funding for projects where the Governor determined there is a need for activities or construction of specific buildings or facilities related to coal or mineral industry in States impacted by coal or minerals development.

Sixth, Congress specifically prohibited funding for projects which are designated for remedial action pursuant to the Uranium Mill Tailings Control Act of 1978 (42 U.S.C. 7901) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).

Seventh, Congress enacted limited immunity for States and Indian tribes 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 abandoned mine reclamation plan.

Eighth, Congress provided that nothing in the amendments should be construed to affect the certifications made by the States of Wyoming, Montana, and Louisiana.

To explain these eight major revisions to the noncoal reclamation authority in SMCRA, OSM has made several amendments to part 875.

OSM proposes to add a § 875.10 which would deal with the information collection requirements contained in part 875. The proposed section would contain a list of the information collection requirements contained in part 875, the OMB clearance number, the estimated reporting burden per respondent for complying with the information collection requirements and the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

In § 875.12 (Eligible lands and water prior to certification) OSM is proposing to promulgate two eligibility sections. The first, § 875.12, would reflect Congress' directive to limit expenditures for noncoal projects until a State had certified that all known coal problems had been addressed. Subsection 875.12 would specifically limit funding prior to certification to lands which were mined and abandoned prior to August 3, 1977; when there is no continuing reclamation responsibility; and when the project relates to the protection of the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices (i.e. a priority 1 project—see section 403(a) of SMCRA). SMCRA as enacted in 1977 was broader in scope and had allowed States to undertake noncoal projects, prior to completing all coal projects, if the noncoal project related to the protection of the public health and safety. OSM has tried to treat States and Tribes similarly. Thus, the language in § 875.12 would provide that the Governor of a State or the equivalent head of an Indian tribe would have to request the noncoal funding. OSM specifically requests input from Indian tribes regarding the description of the appropriate official who would make the requests required by section 409.

Congress directed the limiting language of section 409 due to a perception that OSM had been lax in allowing the States to use funds for noncoal purposes prior to their certifying the completion of all known coal projects. By limiting noncoal projects to a priority 1 type problem (extreme danger), Congress intended to severely limit the use of AML monies for noncoal projects in States which had not completed all abandoned coal mine projects. H.R. Report No. 294, 101st Congress, 1st Sess. 32 (1977).

The second eligibility section (875.14) greatly expands the noncoal reclamation capabilities of the States and is only applicable after a State has met the certification requirements set out in § 875.13. This subsection is discussed after § 875.13.

Section 875.13 (Certification) sets forth the requirements necessary for a State to fully implement a noncoal reclamation program. In order to fully implement a noncoal reclamation program as set forth in section 411 of SMCRA, a Governor of a State or the equivalent head of an Indian tribe would have to certify to the Director that the State/Tribe had achieved all known coal related reclamation objectives (i.e, priorities 1 to 6). Section 875.13(a) would provide the requirements for this certification. Briefly, a State would have to provide a discussion regarding the process and rationale for its certification, along with an analysis of the public involvement process it used and any public comments. These materials would assist the Director in his concurrence finding and ensure that the State properly canvassed the public to ascertain whether, indeed, all coal problems had been addressed.

Subsection (b) describes the Director's review of the certification process. At a minimum the Director would prepare a **Federal Register** notice informing the public of the State's proposed certification. After a review of the public comments and any other relevant information, the Director would publish a final notice regarding his decision. If the Director concurs in the State's finding, such concurrence would be premised on the State's pledge to immediately give the highest priority to any coal problems which thereafter arise. If a coal problem does occur, the State would carry out the coal reclamation activity under the State authorities relating to coal and not pursuant to the noncoal authority in section 411 of SMCRA.

Section 875.14 (Eligibility of lands and water subsequent to certification), is the second eligibility section for noncoal. This subsection marks the beginning of the provisions relating to a State's noncoal reclamation program, a program which is only implemented after the requirements set forth in § 875.13 have been met.

The new eligibility requirements would allow funding for lands, waters, and facilities which were mined and abandoned in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws. In determining eligibility under this subsection, for Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977 date, the applicable dates would be August 28, 1974 and November 26, 1980, respectively. As noted in H.R. Report 294, these dates refer to the promulgation of surface management regulations for Mining Law of 1972 operations by these agencies. H.R. Report No. 294, 101st Congress, 1st Session 34 (1989).

A subsection (c) has also been included in Section 875.14 to clarify that if a coal problem does occur after certification a State would be required to address this problem utilizing State share monies no later than the next grant cycle. After certification, no Federal monies would be distributed to the State regardless of whether coal problems occur. In addition, States would be required to address the coal problems utilizing its coal authority; that is, the State plan provisions relating to sections 401 through 408 of SMCRA.

Section 875.15 (Priorities). This section would establish the reclamation priorities applicable to a State noncoal reclamation program following the certification of all known coal problems. Reclamation projects involving the restoration of lands and water adversely affected by past mineral mining, as well as projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads and such other 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, would have to reflect four priorities. The first priority would be the protection of public health and safety and general welfare from the extreme danger of adverse effects of mineral mining processes. The second priority would be the protection of public health, safety, and general welfare from the adverse effects of mineral mining. The third priority would be the restoration of lands and waters previously degraded by the adverse effects. The fourth priority concerns the construction of public facilities in communities impacted by coal or mineral mining and processing practices. Where such construction is not necessary to protect the public health and safety from the adverse effects of mineral mining, such projects would be given the lowest priority.

In order to determine the proper eligibility and priority ranking of a public facility construction project in an impacted community, a finding would have to be made as to whether the construction of such a facility or utility relates to the priorities set forth in section 411(c) of SMCRA and 30 CFR 875.15 of the Secretary's implementing regulations. For example, the construction of such a project would have to lead to "the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices" in order to constitute a "priority one" project. H.R. Report No. 294, 101st Congress, 1st Session 35 (1989).

Subsection 875.15(b) addresses the issue of "enhancement." The noncoal reclamation priorities provide for projects which protect, repair, replace, or "enhance" facilities or utilities that may be adversely affected by mining processes or practices. In order to provide some parameters involving the scope and size of "enhancement" projects, OSM is proposing the following criteria in subsection (b). The Director would, in his discretion, approve funding for projects involving the enhancement of facilities or utilities if he concurs in a finding by the State that: (1) Monies from other sources are either not available or such sources are contributing their fair share of construction funds; (2) there is an urgent need to undertake the project prior to the completion of reclamation activities which would restore the land and the environment or protect the public; and (3) the enhancement of the facility is necessary to achieve the objectives of the Act. States would be allowed to enhance facilities or utilities in order to meet local, State, or Federal public health, safety, or other applicable code requirements but would not be able to areally extend a utility or facility under Subsection (a) or (b) if it is not necessary to address an AML problem.

OSM would carefully scrutinize the scope of any project which included the "enhancement" of a facility, and would carefully consider the following factors in reaching a funding decision.

• The extent to which the problems associated with the facility resulted from deterioration through aging of the facility due to normal or routine maintenance or replacement or lack thereof.

• The degree to which the AML problems affect the facility. A direct causal connection between mining practices and damage done to a facility or utility is not always clear. OSM will therefore carefully review such other factors as public use, weather, materials used, method of construction, or other pollution sources which may have contributed to the damage. Where it is evident that other non-AML sources have contributed to the damage, OSM would approve funding only for that percentage attributable to the AML damage; and

• The extent to which the enhancement of the facility increases services to areas not affected by AML problems or unaffected populations. Costs associated with extending services to unaffected areas or populations would not be eligible for funding.

The term "enhancement" under § 875.15(a) or (b) would also authorize funding for improvements necessary to meet public health and safety requirements but not for the areal extension of a facility or utility which is not necessary to address an AML problem. The issue on "enhancement" is similar to the discussion in § 874.14. OSM specifically requests comments concerning the scope and definition of this term.

Subsections (c), (d) and (e) have been proposed to address a new provision in SMCRA (Section 411(f)) which would allow a State to request funding notwithstanding the priorities in section 411 for a public facility if a Governor of a State determines there is a need for the construction of the public facility related to the coal or minerals industry in States impacted by coal or minerals development.

OSM is concerned that the AML Program, which is financed by a tax on coal production, not be "side tracked" from its primary mission to reclaim lands and waters damaged by coal and noncoal mining processes. Accordingly, prior to approval, projects involving the construction of facilities pursuant to section 411(f) of SMCRA would be given extensive public review (subsection (e)).

Subsection (d) would specify that each State grant application for funding under § 875.15(c) would have to include information regarding (1) the need or urgency of the activity or facility; (2) the expected impact on the mining industry in the State; (3) the availability of funding from other sources; (4) the impact on the State if the activity or facilities is not undertaken; (5) the reason why the project was selected over other projects related to the public health and safety or to the environment; (6) the extent of the public involvement in the State's decision, and (7) funding decisions made by other local, State, and Federal agencies with oversight for such facilities.

These requirements would assist the Director in determining whether a "need" exists, whether the public has been fully appraised and informed of the request, and whether other Federal and State agencies with primary responsibility for such facilities or activities have been contacted and involved in the project design and funding request.

Subsection (e) would set forth the requirements for the Director's decision. Prior to approval, the Director would have to request public review and comment and evaluate any responses. Moreover, if the Director determines that an urgent need exists, he would be authorized to approve the request at a funding level commensurate with the purposes of the Surface Mining Control and Reclamation Act of 1977.

The ability and discretion to vary the funding level should provide the Director the ability to safeguard the AML Fund and ensure that the AML taxes are not subsidizing other programs at the public's expense or safety. OSM would expect a State to fully explore funding opportunities with local, State, and Federal agencies with primary oversight of such facilities or activities before approaching OSM for funding under the AML program. These responses, if appropriate, would help substantiate the State's finding of "need" as required by SMCRA and assist the Director in deciding whether to approve the AML funding request.

Section 875.16 (Exclusion of noncoal reclamation sites). This section would set forth noncoal reclamation sites which Congress has specifically excluded from the coverage of SMCRA. Monies cannot be used for the reclamation of sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (42 U.S C. 9601 *et seq.*). OSM would interpret this provision as allowing reclamation activities to proceed on any noncoal site which is not listed on the Environmental Protection Agency's (EPA) National Priority List (NPL) pursuant to section 105 of CERCLA, 42 U.S.C. 9605(a)(8)(B). However, since EPA has been designated the lead agency in responding to hazardous waste clean up, no funding requests would be approved for eligible sites unless the State had obtained the approval of EPA. OSM intends to conduct discussions with the EPA regarding the funding of noncoal projects and procedures for obtaining EPA concurrence and approval.

Section 875.17 (Land acquisition). This section would make the land acquisition provisions set out in section 407 of SMCRA and 30 CFR parts 877 and 879 of the Secretary's regulations applicable to a State's noncoal reclamation program. This would implement the provisions set forth in section 411(g) of SMCRA.

Section 875.18 (Liens). Similarly, § 875.11 would make the lien provisions of section 408 of SMCRA and 30 CFR part 882 of the Secretary's regulations applicable to a State's noncoal reclamation program. This provision does not alter OSM's original regulations in 30 CFR part 882 which holds the lien requirements applicable to all reclamation on private land regardless of whether it was mined for coal or noncoal purposes. Monies recovered through the satisfaction of liens filed against privately owned lands will continue to be handled in accordance with 30 CFR 872.12.

Section 875.19 (Limited liability). This section reiterates the language in section 405(e) of SMCRA which provides that no State or Indian tribe shall be liable under Federal law for any costs or damages as a result of any action or omitted action while carrying out an approved abandoned mine reclamation plan. This section does not preclude liability for gross negligence or intentional misconduct.

*Comments Received During Outreach—Part 875*

*Comment:* "New § 875.14 would establish eligibility requirements for noncoal sites. It would specify that noncoal priorities would be the same as the coal priorities set out in Section 403 (1), (2) and (3) of the Act." The regulation should specify that noncoal priorities would be "in lieu of" the coal priorities. There are some differences between the coal and noncoal priorities which need to be accommodated.

*Response:* The proposed regulations would specify specific priorities for a State's noncoal reclamation program since such priorities and the projects which would be eligible differ to a significant degree from those specified in section 403(a).

*Comment:* One commenter urged OSM to specify in the regulations that new or anticipated coal projects could be funded after certification pursuant to section 411.

*Response:* OSM has not adopted this suggestion in a proposed regulation. It remains OSM's policy that prior to certification a state should address all coal objectives, including all lower priority projects. After certification, a State would have to give top priority to new or unanticipated coal problems that occur. The State, however, would have to show why it is a "new" or "unanticipated" project in order to gain

OSM's approval. OSM believes this policy would require States to look at all potential coal projects first prior to deciding to certify that all objectives have been met. If coal problems do occur after certification, i.e. new or unanticipated, these projects would qualify if they meet the priorities specified in Section 403(a) (coal priorities) and not the priorities in Section 411 (noncoal priorities).

*Comment:* "Section 874.15 would exclude sites designated for reclamation pursuant to the Uranium Mill Tailing Radiation Control Act of 1980 and those listed for action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980." The exact language of the amendment to title IV should be used here in referring to "remedial action" because of its special meaning under the two acts cited.

*Response:* One commenter has urged OSM to adopt proposed regulatory language which reflects the exact language of section 411(d). This amendment to SMCRA specifically excludes sites designated for reclamation pursuant to the Uranium Mill Tailing Radiation Control Act 1980 and those listed for action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). OSM has utilized the exact statutory language in its regulations and has further stated in the preamble that it would interpret the phrase "listed for action" pursuant to CERCLA as meaning those projects listed on the National Priority List under section 105 of CERCLA.

*Comment:* "Section 875.16 would provide guidance for preparing a certification of completion of noncoal sites. It would codify the process for certification and describe the criteria for Secretarial concurrence." A number of issues are raised when addressing certification. These include the difficulty, if not impossibility of identifying and completing priority 4, 5, and 6 problems, the inconsistencies between States in existing priority 3 inventories, and the inconsistency between States that have already certified and States wishing to certify in the future.

*Response:* Several commenters have requested that OSM clarify whether States must address priority 4, 5, and 6 problems prior to certifying. The proposed regulations provide that a State would have to certify that it has completed all known coal objectives. Consistent with past OSM policy, this would require a State to address all lower priority problems as well. Since a priority 4 project involves research and a priority 5 or 6 project involves the protection or construction of public facilities (a priority 6 involves development of land) and not the reclamation of land, such decisions are discretionary.

OSM, however, expects a State to fund such priority 4 and 5 projects if they are identified and known. OSM believes such polices would motivate States to carefully consider all forms of lower priority projects prior to requesting certification pursuant to section 411 of SMCRA.

*Comment:* "New § 875.17 would define the scope of public utilities adversely affected and the construction of public facilities in communities impacted by coal mining and processing. It would also provide that funds available from grants under section 402(g)(1) of the Act may be used to carry out these projects. It would also establish the priority these projects would have relative to other projects." This section should reference impacts by both coal and mineral mining and processing. Definitions of public facilities and activities are also needed. States should not be precluded from doing coal reclamation work under this section.

*Response:* Several commenters requested that OSM consider defining such terms as "public facilities", "enhancement," and "activities." OSM's proposed regulations have not attempted to define all terms, however, since some definitions may unduly restrict possible action by the States. OSM has instead attempted to have the State fully discuss the rationale for funding the facility project. This rationale would include (1) the specific need, (2) impact on the community and coal or mineral industry, (3) availability of funding from other sources, (4) impact on the State if the activity or facility is not funded and (5) the reason for ranking and selecting the projects prior to projects protecting the public health and safety. OSM believes that a full open discussion of the project in the public arena, both on a State and Federal level, would filter out all but the most urgent projects. Additionally, by requiring documentation, OSM has treated the issue of "enhancement" in a manner similar to that discussed for proposed regulation § 874.14 regarding the "enhancement" of water projects.

Finally, the term public utility has not been defined since the amendments also use the more expansive term "facilities serving the public".

*Comment:* One commenter asked what is required to support the Governor's certification of need for funding of an activity or specific public facility? Is there a special showing that a State must make to demonstrate that it is a "State impacted by coal and mineral development"?

Procedurally, how will the Secretary concur with the Governor's certification of need for an activity or specific public facility?

*Response:* The proposed regulations do not attempt to specifically define the term "need". This is a term that relates to specific circumstances of a State. The proposed regulations, however, would require a State to clearly set forth why the State perceives an "urgent need", why the State has proposed this project ahead of projects involving the public health and safety and why other funds are or are not being utilized.

The proposed regulations do not specifically delineate what support material is required. OSM would expect a State to fully document and support all of its conclusions and discussions; however, if further clarification is required, OSM has the authority pursuant to section 405(j) of SMCRA to request the additional information.

OSM's proposed regulations do not contemplate a special showing regarding the impact of coal or mineral development on a State. As discussed previously, impacts are hard to define and the circumstances facing each State would probably be unique to that State. OSM would expect the State, however, to fully explain the impacts on the State and why such impacts have created an urgent funding need.

The proposed regulations would require the Secretary to fully review the State's proposal and to seek public comment regarding the funding request.

*Comment:* One commenter asked whether the eligibility of the lien requirements for non-coal sites would be the original Act date of 1977 or the revised date of 1990?

*Response:* The proposed lien requirements have been placed in § 875.18 of the AML regulations to clearly provide that all noncoal projects undertaken by a State would have to meet the same lien requirements as a coal project. All noncoal projects undertaken by a State have been subject to the lien requirements in 30 CFR 882.13. Nothing in the new amendments has altered this.

### Part 876 Acid Mine Drainage Treatment and Abatement Program

Because thousands of miles of Appalachian streams and numerous waterways have been degraded and the biological life significantly impaired or destroyed by acid mine drainage, Congress acknowledged a need to engage in a comprehensive abatement and treatment program for acid mine damage through the Abandoned Mine Reclamation Act of 1990.

In response to the mandate by Congress, OSM is proposing part 876. Part 876 is an optional program for States having an approved abandoned mine land program. Up to ten percent of the funds a State receives through its annual grants, both State share and those amounts based on historical coal production, may be deposited in a special interest-bearing trust fund and used, without regard to lapsing of fund authority, for the purpose of acid mine drainage treatment and abatement projects in qualified hydrologic units. Plans for the use of this acid mine drainage treatment and abatement fund, which must be authorized by State law, are subject to approval by the Secretary.

The acid mine drainage abatement and treatment plan is encouraged to be developed in coordination with the Soil Conservation Service (SCS). The Secretary will ask SCS and the Director of the Bureau of Mines to comment on each proposed plan. The intent of this coordination is to encourage joint efforts with projects initiated by SCS under the Rural Abandoned Mine Program. This will allow States to address acid mine drainage problems on a broader basis, i.e. qualified hydrologic units, instead of a more restricted case-by-case site specific approach. Through this joint approach it is anticipated that more environmentally sound and cost effective methods will be utilized. Projects to address acid mine drainage problems in hydrologic units as defined at § 876.2 are independent of the order of priorities for projects under section 403(a) of SMCRA.

In defining qualified hydrologic unit, OSM has interpreted the statutory language to mean those lands and waters which are (1) eligible pursuant to section 404 and include any of the first three priorities as stated in section 403(a), or (2) proposed to be the subject of expenditures by the State (from amounts available from the forfeiture of bonds required under section 509 or from other State sources) to mitigate acid mine drainage. Based upon the legislative history, it was apparent that the intent was to make both categories independently eligible for funding.

### *Comments Received During Outreach—Part 876*

*Comment:* "New part 876 would provide for the creation of an acid mine drainage program in States of up to 10% of the grants made under §§ 872.11(b)(2) and 872.11(b)(5) (exclusive of those amounts set aside under § 872.12(c)). The new Part would require, and provide procedures for, submittal of plans to the Director, OSM, for approval. Such plans will provide for the abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units." This Part should clarify that the 10% reference is to 10% of all moneys granted to a State.

*Response:* The proposed regulation specifies that a State may utilize up to 10% of the funds granted annually to a State under sections 402(g)(1) (State-share) and 402(g)(5) (mandatory 20% Federal share). This language would mirror the funding criteria specified in section 402(g)(6) of SMCRA.

Section 876.10—Information collection. OSM proposes to include in part 876 a § 876.10 which would contain a list of the information collection requirements contained in part 876, the OMB clearance number, the estimated reporting burden per respondent for complying with the information collection requirements and the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

### Part 886 State Reclamation Grants

OSM is also proposing to add a new provision to § 886.16(a). This provision would establish a grant condition requiring States, prior to contract award, to ensure that a successful bidder for a project funded by the grant is not precluded under § 773.15(b)(1) from receiving a permit or conditional permit to conduct surface coal mining operations. To satisfy this condition, the State would have to check OSM's automated Applicant/Violator System for each contract to be awarded, and verify such information with OSM. This proposed action is taken under the broad grant of authority in sections 201(c) and 412(a) of SMCRA which empower the Secretary to administer the program for controlling surface mining and to do all things necessary or expedient, including the promulgation of regulations, to implement the provisions of title IV. By making those who are listed as violators or linked to violators through ownership or control ineligible for AML contracts, OSM intends to pursue a vigorous enforcement program. Those who are responsible for prior violations of SMCRA should not be allowed to share in the utilization of public funds unless the party listed enters into an agreement with the agency having jurisdiction over the violation or linkage to resolve the violation or linkage, or has instituted a good faith administrative or judicial appeal to contest the linkage or violation. With the assistance of the States, OSM believes that this provision would enhance the collection efforts in both the title IV and title V programs without adversely impacting their administrative burden.

In § 886.23(b)(2), a new paragraph (b)(2)(iv) has been added to incorporate the reporting requirement under State and Tribe reclamation grants, that regularly, but no less than annually, States and Tribes are required to submit to OSM completed OSM-76 forms (Problem Area Description Forms) for all completed coal and noncoal projects. Instructions for completing and processing the completed OSM-76 forms are available in the National Abandoned Mine Lands Inventory Problem Area Description Manual. This requirement is necessary so that the Secretary may provide an updated inventory of abandoned mine land problems to Congress on an annual basis as required by section 403(C) of the Act. Also, the information is necessary to track and report on accomplishments of the AML Program. For the purposes of updating the National Inventory, completed projects are defined as (1) those AML construction projects funded through an approved reclamation grant and (2) those construction projects where on-the-ground reclamation has been completed and the cost figures represent final funding on the project. In proposing this rule, OSM acknowledges that because of the nature of grant funded projects, preliminary cost figures given prior to grant closeout may be revised at a later time.

### *Comments Received During Outreach—Section 886.23(b)(2)*

*Comment:* "New part 878 would be added to provide for an inventory of eligible lands and waters pursuant to section 404 of the Act. Only priority one and two sites need to be included in this inventory. It would be updated annually. A process for adding sites to the inventory would be included." This part should be restricted to coal sites only and not include interim program sites. If a review committee process is proposed, it needs to include an ability for States to appeal committee decisions.

*Response:* OSM's proposed regulations would restrict the National Abandoned Mine Land Inventory to pre-August 3, 1977 sites. These sites must be reclaimed by the State. The selection of post-August 3, 1977, affected sites is a discretionary decision by the State, and is not mandated by the new amendments. OSM would point out, however, that a State would have to reclaim all priority 1 and 2 sites, including eligible post August 3, 1977, sites, prior to reclaiming lower priority sites. Moreover, a State which seeks to certify the completion of all coal objectives must demonstrate that all eligible priority 1 and 2 post SMCRA sites have been reclaimed.

The proposed regulations do not propose specific regulations regarding the updating of the AML inventory. OSM's policies have been discussed previously with the States and are specifically set forth in OSM policy directives.

**IV. Effect on State Programs**

Each State having within its borders coal mined lands eligible for reclamation under title IV of SMCRA may submit to the Secretary a State Reclamation Plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans. The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR part 884). As of March 1, 1991, the Secretary has approved reclamation programs for 23 States and 3 Indian tribes.

An approved State or Tribal AMLR plan can be amended under the provisions of 30 CFR 884.15. Under these provisions, if the amendment or revision changes the objectives, scope, or major policies followed by the States in the conduct of its reclamation program, the Director would follow the procedures set out in 30 CFR 884.14 in approving an amendment or revisions of a State reclamation plan.

The amendments to title IV of SMCRA provide additional authorities for reclamation activities. States wishing to utilize these new provisions would be required to amend their AML programs following the procedures set forth in 30 CFR 884.15 before OSM would be authorized to approve funding for projects which would not have qualified under this approved program. In some instances this authority already exists. For example, States have the authority to undertake high priority water projects. To be funded prior to revisions of a State AML Plan, however, a State would have to meet the original eligibility requirements, and based on the new amendments to SMCRA, water projects could not represent over 30 percent of the funds granted annually to that State or Indian tribe.

In other instances, States will need new legislative authority to undertake certain projects. For example, if a State wishes to fund certain public facility construction projects pursuant to the authority in section 411 of SMCRA, the State would be required to submit and have approved as an AML Plan amendment its new legislative authority as well as any pertinent discussion, consistent with OSM's regulations for implementing those provisions. Only after a State's AML Plan is properly amended under the procedures set forth in 30 CFR 884.15 would OSM be authorized to fund projects requiring the new authority in title IV.

OSM intends to work closely with the States regarding the required AML Plan amendments to ensure that all amendments are developed consistent with the mandates of title IV and the Secretary's implementing regulations and that the amendments are processed in the most efficient and expeditious manner.

**V. Procedural Matters**

*Federal Paperwork Reduction Act*

The collections of information contained in this rule have been submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The public reporting burden for the revised OSM–1 Form is estimated to average 16 minutes. The public reporting burden for the information collection requirements contained in part 875 and part 876 are estimated to average 32 hours and 1,040 hours, respectively. The estimated burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Ave., room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029), Washington, DC 20503.

**Author**

The principal author of this rule is D.M. Lytton, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–5365 (commercial) or 268–5365 (FTS).

*Executive Order 12291 and Regulatory Flexibility Act*

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

*National Environmental Policy Act*

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly effect the quality of the environment under Section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address specified previously (see "ADDRESSES"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

**List of Subjects**

*30 CFR Part 795*

Grant programs-natural resources, Reporting and recordkeeping requirements, Small businesses, Surface mining, Technical assistance, Underground mining.

*30 CFR Part 870*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 872*

Indian-lands, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 873*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 874*

Indian-lands, Surface mining, Underground mining.

*30 CFR Part 875*

Indians-lands, Surface mining, Underground mining.

*30 CFR Part 876*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 886*

Grant programs-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 795, 870, 872, 873, 874, 875, 876, and 886 as set forth below.

Dated: July 23, 1991.

**David O'Neal,**

*Assistant Secretary for Land and Minerals Management.*

## PART 795—PERMANENT REGULATORY PROGRAM—SMALL OPERATORS ASSISTANCE PROGRAM

1. The authority citation for part 795 continues to read as follows:

**Authority:** Sec. 201, 501, 502, and 507, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

2. Section 795.4 is revised to read as follows:

### § 795.4 Information collection.

The collections of information contained in §§ 795.7, 795.8, 795.9 and 795.10 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0061. The information will be used to determine if the applicants meet the requirements of the Small Operator Assistance Program. The obligation to respond is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 22 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0061), Washington, DC 20503.

3. Section 795.6 is amended by revising the introductory text of paragraph (a)(2), paragraphs (a)(2) (i) and (ii) to read as follows:

### § 795.6 Eligibility for assistance.

(a) * * *

(2) Establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first 5 years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant—

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

* * * * *

4. Section 795.9 is amended by revising paragraph (b)(2) to read as follows:

### § 795.9 Program services and data requirements.

* * * * *

(b) * * *

(2) The statement of the results of drilling and test borings or core samplings for the proposed permit area in accordance with §§ 780.22(b) and 784.22(b) and any other applicable provisions of this chapter.

* * * * *

5. Section 795.12 is amended by revising paragraph (a)(2) and removing paragraph (a)(3) to read as follows:

### § 795.12 Applicant liability.

(a) * * *

(2) The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds coal tonnage governing SOAP eligibility in effect at the time assistance was approved during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit, whichever is shorter.

* * * * *

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

6. The authority citation for part 870 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100.34.

7. Section 870.10 is revised to read as follows:

### § 870.10 Information collection.

The recordkeeping requirements contained in § 870.18 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0090. The collection of information contained in the OSM–1 Form have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0063. The information will be used by the regulatory authority to determine whether coal mine operators are reporting accurate production figures and paying proper fees. The obligation to respond is mandatory in accordance with Public Law 95–87. Public reporting burden for this collection of information is estimated to average 2 hours for recordkeeping (1029–0090) and 16 minutes per response (1029–0063), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0063) or (1029–0090), Washington, DC 20503.

8. Sections 870.12 is amended by adding paragraphs (d) to read as follows:

### § 870.12 Reclamation fee.

* * * * *

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977 and ending September 30, 1995.

9. Section 870.15 is amended by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

**§ 870.15 Reclamation fee payment.**

* * * * *

(b) Each operator shall use mine report Form OSM–1 (or any approved successor form) to report tonnage of coal sold, used or transferred, as well as other information pertinent to the sale and ownership of the coal, during the applicable calendar quarter.

(c) * * * All operators who receive a Coal Sales and Reclamation Fee Report (Form OSM 1), including those with zero sales, uses, or transfers, must submit a completed Form OSM–1, as well as any fee payment due.

* * * * *

10. Section 870.17 is revised to read as follows:

**§ 870.17 Compliance authority.**

The Secretary or any duly designated officer, employee, or representative of the Secretary may conduct such audits of coal sales, transfers, and use, and the payment of AML fees as may be necessary to ensure compliance with the provisions of SMCRA, and for such purposes shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person involved in a coal transaction, including without limitation, permittees, operators, brokers, purchasers, persons operating preparation plants and tipples, and any recipients of royalty payments for the coal.

## PART 872—ABANDONED MINE RECLAMATION FUNDS

11. The authority citation for part 872 is revised to read as follows:

**Authority:** 30 U.S.C. 1201, *et seq.* as amended.

12. Section 872.11 is amended by adding new paragraph (a)(6); and revising paragraph (b) to read as follows:

**§ 872.11 Abandoned Mine Reclamation Fund.**

(a) * * *

(6) Interest and any other income earned from investment of the Fund. Such interest and other income shall be credited only to the Federal share.

(b) * * *

(1) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises OSM in writing that it does not intend to submit a State reclamation plan, no monies shall be allocated to that State. Amounts granted to a State that have not been expended within three years from the date of grant award shall be available to the Director for other purposes under paragraph (b)(5) of this section. Such funds may be withdrawn from the State if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(2) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe or tribes having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian reclamation plan. If an Indian tribe advises OSM in writing that it does not intend to submit an Indian reclamation plan, no monies shall be allocated to that tribe. Amounts granted to Indian tribes that have not been expended within three years from the date of grant award shall be available to the Director for other purposes under paragraph (b)(5) of this section. Such funds may be withdrawn from the Indian tribes if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(3) An amount equal to 10 percent of the monies collected and deposited in the Fund annually, as well as 20 percent of the interest and other miscellaneous receipts to the Fund, shall be allocated for use by the Secretary of Agriculture to carry out the Rural Abandoned Mine Program.

(4) An amount equal to 40 percent of the monies deposited in the Fund annually after making the allocations referred to in paragraphs (b)(1) and (2) of this section shall be allocated for use by the Secretary to supplement annual grants to States and Indian tribes. States and Indian tribes eligible for supplemental grants under this provision are those that have not certified under section 411(a) of SMCRA and have priority 1 or 2 problem areas, as set forth in section 403(a) of SMCRA. The allocation of such fund by the Secretary to eligible States and Tribes shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Provided, however, funds to be granted to specific States or Tribes under this paragraph may be reduced or curtailed under the following two conditions:

(i) If State or Tribal share funds to be granted in a year are sufficient to address all remaining eligible priority 1 or 2 sites in the State or on Indian lands, no additional funds under this paragraph will be provided during that year; or

(ii) If the costs to reclaim all remaining priority 1 or 2 sites in a specific State or on a specific Tribe's land exceeds the amount of State or Tribal share funds to be granted in a year to that State or Indian tribe pursuant to section 402(g)(1) of SMCRA, but is less than the total amount of funds to be granted to the State or Indian tribe in that year utilizing State and Federal funds under paragraphs (b) (1), (2), (3), and (4) of this section, the Federal funds granted under this paragraph will be reduced to that amount needed to fully fund all remaining priority 1 or 2 sites after utilizing all available State share funds.

(5) Amounts available in the Fund which are not allocated in paragraphs (b) (1), (2), (3), and (4) of this section are authorized to be expended by the Secretary for any of the following:

(i) The Small Operator Assistance Program under section 507(c) of the Act (not more than $10,000,000 annually).

(ii) Emergency projects under State, Tribal, and Federal programs under Section 410 of the Act.

(iii) Nonemergency projects in nonprogram States and on Tribal lands which do not have an approved abandoned mine reclamation program pursuant to section 405 of the Act.

(iv) Administration of the Abandoned Mine Land Reclamation Program by the Secretary.

(v) Projects authorized under section 402(g)(4)(B) in nonprogram States.

(6) If the distribution of funds is necessary to achieve the priorities stated in paragraphs 403(a) (1) and (2) of SMCRA, the Secretary, subject to the provision below, shall grant annually not less than $2,000,000 for expenditure in each State and Indian tribe having an approved abandoned mine land program, provided however, that annual State share funds are utilized first, and that supplemental funds granted under this paragraph and paragraph (b)(4) of this section shall not exceed the costs of reclaiming all remaining priority 1 or 2 sites in a State or on Tribal land.

(7) Funds allocated or expended annually by the Secretary under Sections 402(g) (2), (3), or (4) of SMCRA for any State or Indian tribe shall not be deducted against funds to be granted annually to a State or Indian tribe under

the authority of Sections 402(g) (1), (5) or (8) of SMCRA.

(8) The Secretary shall expend funds pursuant to the authority in section 402(g)(3)(C) only in States or on Indian lands which have no abandoned mine reclamation program.

* * * * *

13. Part 873 is added to read as follow:

## PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

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

**Authority:** Public Law 95-87, (30 U.S.C. 1201 *et seq.*), and Public Law 101-508

### § 873.1 Scope.

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

### § 873.11 Applicability.

The provisions of this part apply to the granting, pursuant to section 402(g)(6) of SMCRA, of funds and their use by the States for coal reclamation purposes after September 30, 1995.

### § 873.12 Future set-aside program criteria.

(a) Any State may receive and retain without regard to the 3 year limitation referred to in section 402(g)(1)(D) of the Act, 30 U.S.C. 1232, up to 10 percent of the total of the grant funds made annually to such State, if such amounts are deposited into either a special fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in section 403(a) of the Act, 30 U.S.C. 1233, after September 30, 1995 or an acid mine drainage abatement and treatment fund pursuant to 30 CFR part 876.

(b) Prior to receiving a grant pursuant to this part, a State must:

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

(2) Specify that monies in the account may only be used after September 30, 1995, by the designated State agency to achieve the priorities stated in section 403(a) of the Act, 30 U.S.C. 1233.

(c) After the conditions specified in paragraphs (a) and (b) of this section are met, a grant may be approved and monies deposited into the special fund account. The monies granted, together with any interest earned, shall be considered State monies.

## Part 874—GENERAL RECLAMATION REQUIREMENTS

14. Part 874 is amended by revising the authority citation to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, as amended.

15. Section 874.12 is amended by adding paragraphs (d), (e), (f), and (g) to read as follows:

### § 874.12 Eligible coal lands and water.

* * * * *

(d) Notwithstanding paragraphs (a), (b), (c) of this section, coal lands and waters in a State damaged and abandoned after August 3, 1977, by coal mining process 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 ending on or before the date on which the Secretary approved a State program pursuant to section 503 of the Act (30 U.S.C. 1253) for a State in which the site is located and that any funds for reclamation or abatement which 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

(3) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on November 5, 1990, and that the surety of the mining operator became insolvent during such period and 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

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

(e) Any State may expend funds made available under paragraphs 402(g) (1) and (5) of the Act (30 U.S.C. 1232(g) (1) and (5)) for reclamation and abatement of any site eligible under paragraph (d) of this section, if the State with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to paragraphs (a), (b) or (c) of this section which qualify as a priority (1) or (2) site under section 403 of the Act (30 U.S.C. 1233).

(f) Monies available from sources outside the Abandoned Mine Reclamation Fund or which are ultimately recovered from responsible parties involving lands eligible pursuant to paragraphs (d) and (e) of this section, shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the site.

(g) Reclamation undertaken pursuant to findings made under paragraphs (d) and (e) of this section shall not relieve any responsible party for the costs of the reclamation which may be assessed under title V of this Act. Furthermore, neither the Secretary nor a State 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. All reclamation performed by the Secretary should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" available for inspection at the Office of Surface Mining, Administrative Record, 1100 L Street NW., Room 5131, Washington, DC 20240.

16. Section 874.13 is revised to read as follows:

### § 874.13 Reclamation objectives and priorities.

(a) Reclamation projects should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects".

(b) Reclamation projects shall follow the priorities of section 403 of the Act (30 U.S.C. 1233). Projects lower than a priority two may not be undertaken until all known higher priority coal projects have either been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority one or two site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects".

17. Section 874.14 is added to read as follows:

### § 874.14 Utilities and other facilities.

(a) Any State or Indian tribe not certified under Section 411(a) of the Act, 30 U.S.C. 1241(a), may expend up to 30 percent of the funds granted annually to such State or Indian tribe for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(b) If the adverse effect on water supplies referred to in this subsection 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) OSM may approve, in its discretion, projects involving the construction or enhancement of water facilities if the State or Indian tribe submits documentation from applicable local, State, and Federal agencies with oversight for such utilities or facilities concerning what funding resources are available and why this specific project is not being fully funded by their agency and the Director concurs in a State or Indian tribe finding that:

(1) Monies from other sources are either not available or such sources are contributing their fair share of construction funds,

(2) There is an urgent need to undertake the project which gives it the same or higher priority than projects remaining on the State's or Indian tribe's coal site inventory, and

(3) The enhancement of the facility is necessary to achieve the objectives of this title.

(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 areal expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

18. Section 874.15 is added to read as follows:

#### § 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 the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

## PART 875—NONCOAL RECLAMATION

19. Part 875 is revised to read as follows:

Sec.
875.1 Scope.
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 subsequent to certification.
875.15 Reclamation priorities for noncoal program.
875.16 Exclusion of noncoal reclamation sites.
875.17 Land acquisition authority—noncoal.
875.18 Lien requirements.
875.19 Limited liability.

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

#### § 875.1 Scope.

This part establishes land and water eligibility requirements and for non-coal reclamation.

#### § 875.10 Information collection.

The collections of information contained in §§ 875.13(a) and 875.15(d) have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–____. The information will be used to determine if noncoal reclamation is being accomplished according to legislative mandate. The obligation to respond is required to obtain a benefit in accordance with Public Law 95–87.

Public reporting burden for this information is estimated to average 32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW, room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–____), Washington, DC 20503.

#### § 875.11 Applicability.

The provisions of this part apply to all reclamation projects on lands or water mined or affected by mining of minerals and materials other than coal and are to be carried out with money from the Fund and administered by a State or Indian tribe under an approved reclamation program according to part 884 of this chapter.

#### § 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 prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(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 the State as a result of bond forfeiture, which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or, in cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the Fund may be sought under parts 886 or 888 of this chapter;

(d) The reclamation has been requested by the Governor of the State or equivalent head of the 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.

#### § 875.13 Certification of completion of coal sites.

(a) The Governor of a State, or the equivalent head of an Indian tribe, with a previously approved abandoned mine reclamation program may submit to the Secretary a certification of completion expressing the finding that the State/Tribe has achieved all existing known coal related reclamation objectives for eligible lands and waters pursuant to section 404 of Public Law 95–87 (30 U.S.C. 1239), or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion shall also contain:

(1) A description of both the rationale and the process utilized to arrive at the above finding for the completion of all coal related reclamation pursuant to section 403(a) (1) through (6).

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

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

(4) A description of the State/Tribe ability or provisions to fund all potential coal related problems that may 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 prepare and provide notice in the Federal Register an 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 such final notice in the Federal Register. This concurrence is based upon the State's or Indian tribe's commitment to give top priority to any coal problem which is hereafter found or occurs.

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

**§ 875.14 Eligible lands and water subsequent to certification.**

Following certification by the State/Tribe of the completion of all known coal projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities shall be those:

(a) 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 prior to August 3, 1977. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date the applicable date shall be August 28, 1974, and November 26, 1980, respectively; and

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

(c) If eligible coal problems occur after certification under § 875.13, a State/Tribe must address the coal problem utilizing State/Tribe share funds no later than the next grant cycle, subject to the availability of funds distributed to the State/Tribe in that cycle. The coal project would be subject to the coal provisions specified in Sections 401 through 408 of SMCRA.

**§ 875.15 Reclamation priorities for noncoal program.**

(a) This paragraph 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 such other 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. Following certification pursuant to § 875.13, the projects and construction of public facilities identified in the preceding sentence 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.

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

(4) The construction of public facilities in communities impacted by coal or other mineral mining and processing practices where such construction is not necessary to protect the public health and safety from the adverse effects of mineral mining or to restore the environment previously degraded by mineral mining.

(b) OSM may approve, in its discretion, projects involving the enhancement or construction of public utilities and facilities serving the public if the State/Tribe submits documentation from applicable local, State, and Federal agencies with oversight for such utilities or facilities concerning what funding resources are available and why this specific project is not being fully funded by their agency, and the Director concurs in a State/Tribe finding that:

(1) Monies from other sources are either not available or such sources are contributing their fair share of construction funds,

(2) There is an urgent need to undertake the project prior to the completion of other reclamation activities, and

(3) The enhancement of the facility is necessary to achieve the objectives of the Act. 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 areal expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(c) Notwithstanding the requirements specified in paragraph (a) of this section, where the Governor of a State or the equivalent head of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development, submits a grant application as required by paragraph (d) of this section and the Director concurs in such need, as set forth in paragraph (e) 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.

(d) To qualify for funding pursuant to the authority in paragraph (c) of this section, a State or Indian tribe must submit a grant application which 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 higher priority project than one 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.

(e) After review of the information contained in the application, the Director shall prepare a Federal Register notice regarding the State's or Indian tribe's submission and provide for public comment. After receipt and evaluation of the comments and a determination that the funding meets the requirements of these regulations and is in the best interests of the State or Indian tribe AHL program, the Director may:

(1) Approve the request for funding the activity or construction at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977;

(2) Direct benefits to the AML Program; and

(3) Notify the public of the decision in a **Federal Register** notice.

**§ 875.16 Exclusion of noncoal reclamation sites.**

Money from the Fund shall not be used for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Hill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

**§ 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) are hereby incorporated and are made applicable to a State's or Indian tribe's noncoal program except that for purposes of this section, the references to coal shall not apply.

**§ 875.18 Lien requirements.**

The lien requirements found in Part 882—Reclamation on Private Land of these regulations are herein incorporated by reference and made applicable to a State's or Indian tribe's noncoal reclamation program under section 411 of the Act.

**§ 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/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.

20. Part 876 is added to read as follows:

## PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.
876.1 Scope.
876.2 Definitions.
876.3 Eligibility.
876.4 Plan content.
876.5 Plan approval.
876.10 Information collection.

**Authority:** 30 U.S.C. 1201 *et seq.*, as amended.

**§ 876.1 Scope.**

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

**§ 876.2 Definitions.**

As used in this part, *qualified hydrologic unit* means a hydrologic unit—

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

(b) Which contains lands and waters which are—

(1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a); or

(2) Proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage.

**§ 876.3 Eligibility.**

(a) Any State having an approved abandoned mine land program may receive and retain, without regard to the 3 year limitation, up to 10 percent of the total of the grants made annually based on State-share and historical coal production funds to such State for the purpose of abandoned mine land reclamation if such amounts are deposited into either—

(1) A special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in Section 403(a) after September 30, 1995; or

(2) An acid mine drainage abatement and treatment fund established under State law.

(b) Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Secretary.

**§ 876.4 Plan content.**

Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

(a) An identification of the qualified hydrologic unit;

(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit;

(c) An identification of the sources of acid mine drainage within the hydrologic unit;

(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit;

(e) The cost of undertaking the proposed abatement and treatment measures;

(f) An identification of existing and proposed sources of funding for such measures; and

(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

**§ 876.5 Plan approval.**

The Director may approve any plan under this paragraph only after determining that such plan meets the requirements of Section 876.4. In conducting an analysis of the items referred to in § 876.4 (d), (e), and (g) the Director shall obtain the comments of the Director of the Bureau of Mines. In approving plans under this paragraph, the Director shall give a priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under the Rural Abandoned Mine Program.

**§ 876.10 Information collection.**

The collection of information contained in § 876.4 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-____. The information will be used to determine if the State's Acid Mine Drainage Abatement and Treatment Programs are being established according to legislative mandate. The obligation to respond is required to obtain a benefit in accordance with Public Law 95–87.

Public reporting burden for this information is estimated to average 1,040 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–00), Washington, DC 20503.

## PART 886—STATE RECLAMATION GRANTS

21. The authority citation for part 886 is revised to read as follows:

**Authority:** Public Law 95–87; 30 U.S.C. 1201 *et seq.*, Public Law 101–508.

22. Section 886.16 is amended by removing the word "and" at the end of paragraph (a)(3), replacing the period at the end of paragraph (a)(4) with "; and" and by adding paragraph (a)(5) to read as follows:

### § 886.16 Grant agreements.

(a) * * *

(5) A condition which provides:

The State shall assure that at the time of contract award, every successful bidder for a project under this grant is not precluded under 30 CFR 773.15(b)(1) from receiving a permit or conditional permit to conduct surface coal mining operations. To satisfy this condition, the State shall check OSM's automated Applicant/Violator System for each contract to be awarded, and verify such information with OSM.

23. A new paragraph (b)(2)(iv) is added to § 886.23 to read as follows:

### § 886.23 Reports.

* * * * *

(b) * * *

(2) * * *

(iv) For any project, a completed Form OSM–76.

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