

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

RIN No. 1029-AB72

**Abandoned Mine Reclamation Grant Procedures**

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

**ACTION:** Final rule.

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

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

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**SUPPLEMENTARY INFORMATION:**

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

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

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

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

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

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

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

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

**B. Proposed Rules**

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

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

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

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

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

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

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

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

**Part 886-State Reclamation Grants**

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

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

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

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

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

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

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

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

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

Rather than listing certain reclamation objectives, OSM is referencing specific

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

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

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

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

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

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

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

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

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

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

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

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

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

of this process. The budget information called for by this revision would provide information that OSM needs to formulate its own budget requests to Congress. In addition, the deletion of the word "administrative" is because under the new procedures outlined in this proposed rule, administrative grants would no longer be separate grants. Other changes to this section are editorial in nature and are designed to reflect existing OSM practice and procedure.

Since no comments were received on this section, it is adopted as proposed.

Section 886.15(c) is renumbered as § 886.15(a) and revised by replacing the word "allocated" with "distributed" in order to clarify that AML funds are "distributed" to States/Indian tribes annually. See the discussion above of proposed revisions to § 886.3. In addition, the previous paragraphs (c)(1)-(6), which refer to specific forms, are deleted in favor of a generalized instruction to use approved forms. This change eliminates the need to amend these regulations if there needs to be a change in form requirements, e.g., when a new Federal law is passed.

Section 886.15(a) is renumbered as § 886.15(b) and amended by revising subsection (a) which allows OSM 90 days in which to act upon a grant application. This amendment would require OSM action on a grant application within 60 days of submittal. This change promotes the overall goal of expediting the AML granting process.

In the interests of greater precision and clarification, OSM has also made an editorial change to the redesignated Subsection 886.15(b) which eliminates "\* \* \* act upon \* \* \*" and substitutes "\* \* \* approve or disapprove \* \* \*". The use of this language is consistent with the wording of subsequent sections.

One commenter stated that the prior § 886.15(a) provides that grants shall be approved by the Director. The commenter pointed out that under the current system, grants are approved by the Field Office Director. The commenter asked whether this regulatory language signals a change from the current practice.

OSM has not changed the regulatory language that provides authority to the Director to approve grants to the States/Indian tribes. OSM points out, however, that the Director has formally delegated this authority to the Field Office level.

Section 886.15(b), which has been redesignated as § 886.15(c), gives OSM 30 days to approve or disapprove a revised application, is revised to allow OSM to treat the revised application as an original. OSM would then have 60

days (under the new § 886.15(b)) to approve or disapprove the application. This change reflects OSM's view that 30 days could be an insufficient amount of time for it to evaluate revised applications. OSM considers 60 days to be a more realistic time frame in which to execute this task.

Several commenters stated that in the prior Subsection 886.15(b), OSM should define what constitutes a minor revision to the grant application. In their view, these minor revisions should not start the 60-day clock for OSM review and approval. In addition, one commenter provided the opinion that the 60-day review and approval process should be shortened to a period of 30 days.

OSM does not agree with these comments. It does not believe that a 30-day period provides sufficient time to review and process grants and agree upon specific details with States/Indian tribes. Accordingly, OSM has not acted upon that part of the comment to reduce the grant processing time period. Furthermore, because of the variation in eligible grant activities and projects, OSM does not believe that the States/Indian tribes would be better served by attempting to further define what is or is not a "minor revision." By trying to list or define items that may or may not occur, one assumes the risk of being over or under inclusive in the class of items described. This ultimately leads to further administrative problems between the States/Indian tribes and OSM. The agency's goal has been and will continue to be to process all grant applications within the 60-day period contemplated by the regulations. Where revisions are required and are submitted accurately and timely by the States/Indian tribes, OSM will attempt in good faith either to meet or take action quicker than the 60-day time period. It must be understood, however, that if there are time delays in obtaining the necessary revisions, it may not be possible in all cases to meet the 60-day period. However, it is a goal that OSM will continue to strive toward.

Section 886.15(d) is revised by inserting the requirement that States/Indian tribes comply with all Federal laws in order to apply for grants under this Part. The deletion of the reference to OSM implementing regulations is merely an editorial change.

Section 886.15(f) is removed because the requirements of this subsection are redundant. Specifically, the information called for in this subsection is also required when States/Indian tribes submit reclamation plans for OSM approval. See 30 CFR 884.13(c)(7).

Section 886.16 is amended to make some editorial and substantive changes.

Specifically, § 886.16(a) is revised by deleting reference to Director approval of an agency's grant application. This is an editorial change; the deleted language is superfluous in light of the fact that a "grant agreement" is in fact the document that represents approval of the agency's grant application.

Therefore, the existence of a grant agreement denotes that OSM has in fact approved the agency's grant application.

Paragraph (3) of § 886.16(a) requires that the grant agreement include project specific amounts. This paragraph is deleted in order to simplify the AML granting process. Specifically, the deletion of paragraph (a)(3) provides that individual projects will no longer be included in the grant agreement. Instead, this information will be submitted to OSM Field Offices on a project-by-project basis before OSM approves the expenditure of funds for individual projects. Current provisions of these regulations (See recordkeeping and reporting requirements discussed in §§ 886.23 and 886.24), combined with the National Environmental Policy Act (NEPA) compliance process discussed in revised Subsection 886.16(d) below, alleviate the need for approval of specific project amounts in the grant agreement.

Paragraph (a)(4) of § 886.16 requires that the grant agreement include allowable transfers of funds. Likewise, paragraph (b) of 886.16 requires Director approval of agency assignment of functions and funds. Paragraph (a)(4) is removed, and paragraph (b) is revised to give the States/Indian tribes more flexibility in administering their AML grant monies. The revision to paragraph (b) would alleviate the need for Director approval prior to assignment by the States/Indian tribes. In the view of OSM, States/Indian tribes are in the best position to dictate which entities are better suited to carry out day-to-day reclamation activities. With OSM approval no longer necessary, paragraph (a)(4) becomes irrelevant and is therefore removed.

Section 886.16(c) is also deleted and paragraph (d) is revised and renumbered as paragraph (c) to reflect changes in the procedures required to effectuate a grant agreement between OSM and a State/Indian tribe. This amendment reflects a change in the technical administration of the grant agreement process.

Specifically, this amendment requires that the Director sign and transmit only two copies of the grant agreement to the agency, instead of the four required prior to amendment. In addition, this amendment changes the time period for the agency to execute the grant from 3 weeks to 20 days. For purposes of this

section, the agency is now required to sign the agreement and return it to OSM within the 20-day period. Since the grant, when signed by the Director, would obligate funds, subsection (c) states that failure of the State/Indian tribe to execute the grant within 20 days would result in a deobligation of the total Federal grant amount. Thus, if the signed agreement is not returned to OSM by the close of business on the 20th day after the designated OSM official signs it and OSM has not granted an extension, OSM will initiate deobligation procedures.

Several commenters have stated that OSM should allow liberal extensions of the 20-day period to execute a grant agreement based upon reasonable justification provided by the State/Indian tribe. Otherwise, commenters note, grantees could be faced with automatic premature deobligations simply because they are unable to obtain the appropriate approvals and authorizing signatures within the 20 calendar day period.

OSM has accepted this comment and made a change in the language of § 886.16(c) to provide that an extension of time may be approved verbally or in writing by the individual delegated the authority to sign grant agreements. Specifically, the word "formally" has been deleted to allow an oral or other less formal mechanism of approval. OSM notes that the States/Indian tribes are the primary delivery mechanism for the AML program. The actual signing of the grant agreements is not a complex matter; OSM will endeavor to continue to keep it as uncomplicated as possible.

In addition, one commenter has requested that the 20-day period of § 886.16(c) be lengthened to 45 days to allow sufficient time to execute grant agreements.

OSM has declined to extend the 20-day period based upon experience over the past decade that reflects that there has been few if any problems encountered by the involved parties in meeting the specified time period.

New §§ 886.16(d) and 886.16(e) are added to clarify that compliance with NEPA is required before AML grant funds may be used by the State/Indian tribe and that a completed Form OSM-76 must be submitted prior to the use of funds for construction activities. Currently, OSM grant procedure requires NEPA compliance at the construction grant award stage. Since the issuance of a grant need not contain authorization of expenditures for any specific project, that action should not require NEPA compliance. Instead, NEPA compliance is deferred until the State/Indian tribe requests authorization

to expend funds under the grant. The actual initiation of each project is the action that might have a significant effect on the environment. Under these procedures, NEPA documentation would be developed as a normal part of project planning rather than up front in a grant application. Although OSM field office approval would still be required before the States/Indian tribes are authorized to proceed with individual projects, OSM believes that the overall management of the grant by the States/Indian tribes is enhanced by this action.

One commenter stated that § 886.16(d) should be revised to clarify that the provisions of the National Environmental Policy Act of 1969 apply to coal AML projects only and not to noncoal projects.

OSM disagrees with this comment. NEPA applies to both coal and noncoal projects. NEPA compliance must occur for every project.

Prior to the time that authorization to expend funds for construction activities is requested, information specific to the project is provided to the OSM field office by the State/Indian tribe. The required information is provided on the Form OSM-76, Abandoned Mine Land Problem Area Description (OMB No. 1029-0081). This information conforms to that required in section 405(f) of SMCRA.

Several commenters asked for clarification on whether the filing of Form OSM-76 with grant applications applies to both coal and noncoal projects. Commenters objected to having to file a Form OSM-76 with noncoal projects.

Although unfunded noncoal problem areas/projects do not have to be included in the AML inventory, if such projects are funded, OSM is required under section 403(c) of SMCRA to establish procedures for, and to track, accomplishments. This is being implemented for all Title IV projects through States/Indian tribes submitting information on Form OSM-76.

It is noted that budgets are "revised" and grants are "amended." Because of the method of approving an AML grant, a budget by itself is not required to be revised. Thus, the title of Section 886.17 would be changed from "Grant and budget revisions" to read "Grant amendments."

Section 886.17 is amended by revising paragraph (a)(1) which refers to OMB Circular A-102. This editorial change properly refers to the Grants Management Common Rule. This editorial change has been made throughout this rule.

Paragraph (a)(2) of § 886.17, which discusses events that trigger notification

requirements, is revised by deleting subparagraphs (i) and (ii) and inserting language specifying that notification is necessary for changes that will result in an extension of the grant period, or require additional funds, or make a budget transfer from administrative costs to project costs or vice versa. This revision eliminates the need to notify OSM of project-specific changes, but retains the mandates of the Grants Management Common Rule. This simplifies the grant process; OSM would not require project-by-project approval of State/Indian tribe AML projects at the time of initial grant approval. Thus, a grant amendment would not be necessary merely due to changes in individual projects that do not effect the overall grant period, funding, or cost category.

Several commenters stated that § 886.17(a)(2) should be revised to clarify that budget transfers, from administrative costs to project costs to indirect costs and vice versa, require notification only and do not require a grant amendment.

OSM disagrees with the comments. The Grants Management Common Rule, (43 CFR part 12, subpart C.30(c)(3)), requires that when a grant provides funding for both construction and nonconstruction activities, the grantee must obtain prior written approval from the awarding agency before making any fund or budget transfers from nonconstruction to construction or vice versa. This requirement is being implemented by the grantee formally amending its approved budget.

Likewise, paragraphs (b)(1) and subparagraphs (b)(3) (i)-(iii) of section 886.17, which require OSM approval for budget revisions of \$5,000 or 5 percent of the grant amount, except in certain enumerated circumstances, are removed by these amendments. Thus, the requirements in paragraphs (b)(1) and (b)(3) (i)-(iii) of section 886.17 are deleted in favor of the new instructions in revised paragraph 886.17(a)(2). This is a conforming change that is brought about by the Grants Management Common Rule and would codify existing practices.

In addition, paragraph (b)(2) of section 886.17 is revised to allow OSM 30 days, instead of the current 15 days, in which to either approve or disapprove the amendment. Paragraph (b)(2) is redesignated as subsection (b). The proposed 30-day time limit reflects OSM's evaluation of the time needed to complete its review of the amendment.

In regard to paragraph 886.17(b)(2), one commenter stated that they prefer 15 days instead of the specified 30-day

period to approve or disapprove grant amendments.

Based on past experience, OSM is of the opinion that a 30-day period provides a reasonable and sufficient time to review and approve or disapprove a grant amendment. Accordingly, OSM has not acted upon this comment and will endeavor to process all grant amendments as quickly as possible within the 30-day period contemplated by the regulation.

Section 886.18, discussing conditions for grant reduction, suspension, and termination, is amended by revising paragraph (a)(2) to make a minor editorial change to the reference from 30 CFR 872.11(b)(2) to 30 CFR 872.11(b)(1) and 872.11(b)(2). This is a conforming change made necessary by rulemaking to implement the AMRA, Pub. L. 101-508.

In the interest of clarity, OSM has decided to substitute the word "obligate" for "expend" in paragraph 886.18(a)(2). Paragraph 402(g)(1)(D) of SMCRA uses the term "expended," but the term "obligate" is deemed to be a more technically correct financial term to reflect an irrevocable commitment of funds by a grantee.

In regard to paragraph 886.18(a)(2), one commenter observed that if a grantee fails to expend distributed funds within a 3-year grant period, those funds will be expended by the Secretary to accomplish the purposes of Title IV. The commenter disagrees with this section due to annual distribution decreases and anticipated future decreases due to the amendments to SMCRA. The commenter feels that all distributed funds should be utilized only by the respective State/Indian tribe for the purposes of Title IV.

Except for the editorial change previously mentioned, OSM does not believe that any changes should be made to this regulation. Section 402(g)(1)(D) of SMCRA specifically provides for the Secretary to use moneys granted, but not expended, within 3 years after the grant award. Note however, that even though the language of this provision has not been modified, OSM has always been able to work with the States/Indian tribes on expending appropriated funds.

Paragraph (a)(3) of section 886.18 is also revised by specifying that certain Indian tribes may receive reclamation funds without having an approved regulatory program. Under the 1987 amendments to SMCRA, the Crow, Hopi, and Navajo Indian tribes do not have an approved Title V program prior to being eligible to receive AML funds. See 30 U.S.C. 1235(k) (1988).

Subsection 886.18(b) is replaced by a new subsection (b). The new subsection (b) incorporates remedial measures outlined in the Grants Management Common Rule.

Also, the current subsection (b) is revised and redesignated as subsection (c). This new subsection (c) contains editorial changes to indicate that the "OSM official delegated grant signature authority" is the person who would give notice of grant reduction, suspension, or termination of a grant. In addition, subsection (c) requires certified mail transmittal of the required written notice. Subsection (c) also adds a new paragraph (7) that would incorporate the concept of mutual termination of a grant as outlined in the Grants Management Common Rule.

Likewise, the current subsection 886.18(c) is redesignated as subsection (d) and revised to clarify that State or Tribal appeals of OSM decisions to reduce, suspend, or terminate a grant are evaluated to the Director of OSM. This rule provides that the Director would have 30 days from receipt to decide the appeal. The Director's decision could then be appealed to the Secretary.

These appeals would be processed in accordance with existing OSM procedures. OSM has elected not to codify the details of this process since the procedures may be amended as necessary.

One commenter stated that, before reduction or termination of a grant, the grantee should be allowed to complete the appeal process provided in Subsection 886.18(d). Hence, paragraph 886.18(c)(2) should be revised to provide for the initiation and completion of the appeals process before any final action is taken to reduce or terminate a grant.

OSM accepts this comment and notes that no regulatory language change is required because the authority to appeal a reduction, suspension or termination of a grant exists in paragraph 886.18(d). Under this paragraph the Director must decide the appeal within 30 days of receipt. Further, a grantee can then appeal the Director's decision to the Secretary who also has 30 days to act upon the appeal.

Section 886.19, which explains requirements for an audit, is revised to remove an outdated reference to OMB Circular A-102.

Two commenters requested further clarification of Section 886.19 by incorporating appropriate reference to specific published Office of Management and Budget guidance.

In order to provide guidance to grantees, OSM has revised section

886.19 to state that the agency shall arrange for an independent audit pursuant to guidance provided by the General Accounting Office and the Office of Management and Budget. This revision is being done in a general fashion because the applicable circulars and other guidance documents could be modified and/or combined in the future.

Section 886.20, which outlines administrative procedures for agencies under this Part, is revised by replacing references to OMB Circular A-102 with the Grants Management Common Rule. This change will alleviate the need for rulemaking to effectuate every minor change in form requirements. No comments were received on this section which is adopted as proposed.

Section 886.21, outlining allowable costs, is revised by deleting the work "project" in paragraph (a). As discussed throughout this rulemaking, these amendments eliminate certain project specific grant procedures under the AML program. The revision will have little substantive effect since previous grants, although containing project-specific information, were for overall reclamation activities.

One commenter has noted that "acquisition of land" is an allowable cost. That commenter has stated that OSM may want to clarify § 886.21(a) to note that acquisition is limited to lands affected by coal and noncoal mining, i.e., does not include public facility projects authorized under Section 411(f) of SMCRA.

OSM has not made any change to § 886.21. This is a general provision that addresses grants as a whole; if specific limitations exist in Title IV of SMCRA, those limitations would have to be complied with as required.

Section 886.22(a) contains some editorial changes in order to properly reference the Grants Management Common Rule. In addition, subsection (d), mandating that drawdowns be made by the agency as closely as possible to the time of making disbursements, is revised by requiring that when advances are appropriate, they should be made as closely as possible to the actual time of disbursement. This change will reflect current practice and procedure. No comments were received on this section which is thus adopted as proposed.

Section 886.23 is amended by replacing the semi annual reporting requirement with an annual reporting requirement. In the view of OSM, annual reporting is sufficient to ensure proper Federal oversight. The AML program has been in effect in most States for over a decade. This change represents the growing maturity of these

programs and the confidence that OSM has in their management.

In order to maintain consistency in the regulatory language, OSM is making a technical change and thereby deleting reference to "cooperative agreements" in § 886.23. The term "grant" as used in this regulation includes financial assistance in the form of grants and/or cooperative agreements.

Several commenters stated their support of the OSM proposal in § 886.23(a) to change the reporting requirements to an annual cycle rather than semi annual.

OSM agrees with the commenters that this change will assist in reducing administrative burdens on grantees and recognizes the superior performance of the States/Indian tribes in administering their AML programs over the years.

In addition, existing paragraph (a) and (b) are revised by deleting references to specific form requirements. This is accomplished by deleting a portion of paragraph (a), all of paragraphs (a)(1)-(2), and all of paragraph (b). In place of these references to specific forms, this amendment directs agencies to submit reporting forms specified by OSM. This change eliminates the need for rulemaking procedures to amend these regulations in every instance when form requirements change. In addition, many of the forms required by this section anticipate the need for project-specific information. In light of the changes that are made by these amendments, specific information no longer needs to be submitted to OSM in advance. Some project-specific information would be provided to OSM at the time a grantee requests approval for expenditures of funds for individual projects.

Additional detailed information would also be available in the grantee's files.

A revised paragraph (b) is added to § 886.23 which requires, at the completion of a grant, agency submission of closeout reports as specified by OSM. Specifically, subsection (b) requires submission of Form OSM-76 upon project completion. This submission is necessary to comply with the requirement in section 403(c) of SMCRA that on a regular basis OSM note on its inventory those projects completed under Title IV.

Section 886.23(c) is deleted, since the requirement to submit Form OSM-76 upon project completion is now contained in revised subsection (b), as noted above.

Several commenters observed that § 886.23(b) states that a completed Form OSM-76 shall be submitted upon project completion, not grant expiration. Because of the 3-year limitation for construction grants and the fact that

many projects may not begin until the end of the first construction season due to fiscal year constraints, some projects may require funding from more than one grant. Consequently, some projects may not be completed when grant closeout reports are due, and a Form OSM-76 sent at that time would be incomplete. Because of this situation, the commenters suggest that OSM needs to define "project completion" within the framework of this section.

OSM agrees in part. However, the term "project completion" refers to when the actual construction/reclamation work is completed. This could involve more than one grant; likewise, it means that if the reclamation is completed at a site after one year of the grant, the Form OSM-76 is due at that time. This is necessary to fulfill the mandate of Section 403(c) requiring that the inventory be updated annually with all completed projects.

Section 886.24 is amended by revising subsection (a) which requires agencies to keep records in accordance with OMB Circular A-102. OSM is revising this subsection to properly reference the Grants Management Common Rule, which supersedes Circular A-102 for purposes of this Part.

Section 886.24(b), which mandates certain recordkeeping requirements for subgrantees and contractors, is deleted. Designation of subsection (a) is removed and paragraph (1) and (2) are redesignated as subsections (a) and (b) respectively. In OSM's judgment, the information called for by this subsection would be redundant in light of the requirements of the Grants Management Common Rule.

No comments were received on this section. This section is being adopted as proposed.

OSM adds a new § 886.25 to simplify the existing regulation by including special Indian land procedures (formerly part 888) in part 886.

New § 886.25(a) discusses the Director's authority to mitigate emergencies or extreme dangers resulting from past coal mining practices and to perform other reclamation on Indian lands not subject to an approved reclamation program.

New § 886.25(b) is a conforming change that would incorporate the language of deleted subsection 888.11(a).

New § 886.25(c) is a conforming change that would incorporate the language of deleted subsection 888.11(b).

New § 886.25(d) is a conforming change that would incorporate the language of deleted subsection 888.11(c).

New § 886.25(e) is a conforming change that would incorporate the language of deleted subsection 888.11(d).

No comments were received on this section, which is therefore adopted as proposed.

#### *Part 887—Subsidence Insurance Program Grants*

Section 887.3 discusses the Director's authority to approve or disapprove grants for subsidence insurance up to a total of \$3 million in States with approved reclamation plans. The reference to section 402(g)(2) of SMCRA is revised to properly reference section 402(g)(1) in light of the 1990 amendments to SMCRA. The reference to § 872.11(b)(2) is changed to a more general reference to § 872.11(b) in order to reference some explanatory language found in that paragraph.

Section 887.10 deals with information collection requirements and their submission to OMB for approval. The collection of this information will not be required until it has been approved by OMB. OSM has revised and amended this section by updating the data contained in the section and including the estimated reporting burden per response for complying with the information collection requirements. The revision also provides the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Section 887.11 discusses eligibility for subsidence insurance program grants under this Part. This section is revised by making minor editorial changes. The reference to § 872.11(b)(2) is changed to a more general reference to § 872.11(b) in order to reference some explanatory language found in that paragraph. In addition, the reference to SMCRA section 402(g)(2) is revised to properly reference section 402(g)(1) in light of the 1990 amendments to SMCRA.

Section 887.12 is amended by replacing all references to OMB Circular A-102 with references to the Grants Management Common Rule. As discussed above, this change reflects the fact that the Grants Management Common Rule supersedes OMB Circular A-102 for the purposes of this Part.

In addition, § 887.12(b), which specifies the contents of a grant application under this Part, is revised by adding a reference to the procedures of 30 CFR part 886. This amendment advances the goal of simplifying the AML grants process by providing a uniform set of procedures for the grant application process. The effect of this amendment is to combine the process of applying for reclamation grants under

part 886 and for subsidence insurance program grants under this Part.

Section 887.13 is amended by replacing reference to OMB Circular A-102 with reference to the Grants Management Common Rule. As discussed above, this change is made throughout these amendments.

No comments were received in regard to any of the above sections contained in part 887, hence these sections are adopted as proposed.

**Part 888—Indian Reclamation Programs**

OSM deletes part 888 and incorporates its provisions into new section 886.25. See the discussion of proposed revisions of section 886.25 above. No comments were received concerning this deletion.

**III. Procedural Matters**

**Paperwork Reduction Act**

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1029-0059, 1029-0090, and 1029-0107.

**Author**

The principal author of this rule is Norman J. Hess, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: 202-208-2949.

**Executive Order 12866**

This rule has been reviewed under Executive Order 12866.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. et seq., the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities.

**National Environmental Policy Act**

OSM has prepared a final environmental assessment (EA) of this rule, and has made a finding that this rule will not significantly affect the quality of the human environment under Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). A finding of no significant impact (FONSI), has been approved for this final rule in accordance with OSM procedures under NEPA. The EA and FONSI are on file in the OSM Administrative Record, room 660, 800 N. Capitol Street NW., Washington, DC.

**Executive Order 12778 on Civil Justice Reform**

This rule has been reviewed under the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of Section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule specifies procedures for the Federal grants program under Title IV of SMCRA. This rule is not intended to preempt State law except that to the extent States wish to participate in the program, they must comply with the Federal rules.

B. What is the effect on existing Federal law or regulations, if any, including all provisions repealed or modified?

This rule modifies the AML grant process regulations pursuant to SMCRA as described herein, and is not intended to modify the rules or provisions of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under Section 526(a) of SMCRA, 30 U.S.C. 1276(a). Prior to any judicial challenge to the application of this rule, however, administrative procedures must be exhausted.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms that are important to the understanding of this rule are set forth in 30 CFR 870.5 and 887.5.

G. Does the rule address other important issues affecting clarity and

general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

**List of Subjects**

**30 CFR Part 870**

Reporting and recordkeeping requirements, Surface mining, Underground mining.

**30 CFR Part 886**

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

**30 CFR Part 887**

Grant programs—natural resources, Insurance, Surface mining, Underground mining.

**30 CFR Part 888**

Indian land, Surface mining, Underground mining.

Dated: January 18, 1995.

**Bob Armstrong,**

*Assistant Secretary—Land and Minerals Management.*

Accordingly, 30 CFR parts 870, 886, 887, and 888 are amended as set forth below:

**CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION**

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

1. The authority citation for part 870 is revised to read as follows:

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

2. Section 870.5 is amended by revising the definition of “Agency” to read as follows:

**§ 870.5 Definitions**

\* \* \* \* \*

*Agency* means the State agency designated by the Governor, or in the case of Indian tribes, the Tribal agency designated by the equivalent head of an Indian tribe, to administer the State/Indian tribe reclamation program and to receive and administer grants under this part.

\* \* \* \* \*



3. The heading of part 886 is revised to read as follows:

**PART 886—STATE AND TRIBAL RECLAMATION GRANTS**

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

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

5. Section 886.1 is revised to read as follows:

**§ 886.1 Scope.**

This part sets forth procedures for grants to States/Indian tribes having an approved plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980) should be used as applicable.

6. Section 886.3 is revised to read as follows:

**§ 886.3 Authority.**

The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress. Such moneys are distributed annually to the States/Indian tribes.

7. Section 886.10 is revised to read as follows:

**§ 886.10 Information collection.**

The collections of information contained in 30 CFR part 886 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0059. The information will be collected to meet the requirements of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) and which are necessary to implement the State/Indian tribe reclamation program. This information will be used by the OSM to ensure that the State/Indian tribe complies with the Grants Management Common Rule (43 CFR part 12, subpart C) and sound principles of grants management. The obligation to respond is required to obtain a benefit in accordance with Pub. L. 95-87. Public reporting burden for this information is estimated to average 4 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 aspect 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 640 NC, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029-0059), Washington D.C. 20503.

8. Section 886.11 is revised to read as follows:

**§ 886.11 Eligibility for grants.**

A State/Indian tribe is eligible for grants under this part if it has a reclamation plan approved under part 884 of this chapter.

9. Section 886.12 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 886.12 Coverage and amount of grants.**

(a) An agency may use moneys granted under this Part to administer the approved reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A-87.

(b) Grants shall be approved for reclamation and eligible lands and water in accordance with 30 U.S.C. 1234 and 1241 and 30 CFR 874.12, 875.12, and 875.14, and in accordance with the priorities stated in 30 U.S.C. 1233 and 1241 and 30 CFR 874.13 and 875.15. To the extent technologically and economically feasible, public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds should use fuel other than petroleum or natural gas.

\* \* \* \* \*

10. Section 886.13 is revised to read as follows:

**§ 886.13 Grant period.**

(a) The period for administrative costs of the authorized agency should not exceed the first year of the grant.

(b) The Director shall approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of 30 U.S.C. 1201 *et seq.*

11. Section 886.14 is revised to read as follows:

**§ 886.14 Annual submission of budget information.**

The agency shall cooperate with OSM in the development of information for

use by the Director in the preparation of his/her requests for appropriation of moneys for reclamation grants. OSM shall determine the schedule for submitting this information on an annual basis. Funds required to prepare this submission may be included in the grants under 30 CFR 886.12.

12. Section 886.15 is amended by revising and redesignating paragraph (a) as (b); by revising and redesignating paragraph (b) as (c); by revising and redesignating paragraph (c) as (a); by revising paragraph (d); and by removing paragraph (f) to read as follows:

**§ 886.15 Grant application procedures.**

(a) An agency shall use application forms and procedures specified by OSM. A preapplication is not required if the total of the grant requested is within the amounts distributed to the State/Indian tribe annually by the Director based on the Congressional appropriation.

(b) OSM shall approve or disapprove a grant application within 60 days of receipt. If OSM approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(c) If the application is not approved, OSM shall inform the agency in writing of the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application. OSM shall process the revised application as an original application.

(d) The agency shall agree to perform the grant in accordance with the Act, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

\* \* \* \* \*

13. Section 886.16 is amended by revising paragraphs (a) and (b); by removing paragraph (c); by redesignating paragraph (d) as (c); by revising redesignated paragraph (c); by redesignating paragraph (e) as (f); and by adding new paragraphs (d) and (e) to read as follows:

**§ 886.16 Grant agreements.**

(a) OSM shall prepare a grant agreement that includes:

- (1) A statement of the work to be covered by the grant; and
- (2) A statement of the approvals of specific actions required under this subchapter or the conditions to be met before approvals can be given if moneys are included in the grant for these actions.

(b) The State/Indian tribe may assign functions and funds to other Federal, State, or local agencies. The grantee



agency shall retain responsibility for overall administration of that grant, including use of funds and reporting.

(c) The Director shall sign two copies of the agreement and transmit them either by certified mail, return receipt requested, or by hand delivery, to the agency for countersignature. The grant constitutes an obligation of Federal funds at the time the Director signs the agreement. The agency shall have 20 calendar days from the date of the Director's signature to execute the agreement in order to accept its terms and conditions. Unless an extension of time is approved by the Director, failure to execute the agreement within 20 calendar days shall result in an immediate deobligation of the total Federal grant amount.

(d) Although the funds are obligated when the Director signs the agreement, for any expenditure requiring compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), funds may not be used by the State/Indian tribe until all actions necessary to ensure compliance with NEPA are taken.

(e) The agency shall submit a completed Form OSM-76 (Abandoned Mine Land Reclamation Problem Area Description) showing proposed funding for any planned non-emergency project work to the applicable OSM field office before it may use funds for construction activities.

\* \* \* \* \*

14. Section 886.17 is revised to read as follows:

**§ 886.17 Grant amendments.**

(a) Grant amendments. (1) A grant amendment is a written alteration of the terms or conditions of the grant agreement, whether accomplished on the initiative of the agency or OSM. All procedures for grant amendments shall conform to those in 43 CFR part 12, subpart C.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes that may require a grant amendment. The agency shall notify the Director in advance of changes that will result in an extension of the grant period or require additional funds, or when the agency plans to make a budget transfer from administrative costs to project costs or vice versa.

(b) OSM shall either approve or disapprove the amendment within 30 days of its receipt.

15. Section 886.18 is amended by revising paragraphs (a)(2) and (a)(3); by redesignating paragraphs (b) and (c) as

paragraphs (c) as (d) respectively; by adding a new paragraph (b); and by revising the newly redesignated paragraphs (c) and (d) to read as follows:

**§ 886.18 Grant reduction, suspension, and termination.**

(a) \* \* \*

(2) If an agency fails to obligate moneys distributed and granted within three years from the date of grant award, or within an extension granted under § 886.13 or § 886.17, OSM may reduce the grant in accordance with § 872.11 (b)(1) and (b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under part 735 of this chapter is terminated, OSM shall terminate the grant awarded under this part. This paragraph does not apply to Indian tribes who receive reclamation funds without having an approved regulatory program.

\* \* \* \* \*

(b) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance in a State plan or application, a notice of award, or elsewhere, OSM may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

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

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

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

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

(c) *Grant reduction, suspension, and termination procedures.* (1) The OSM official delegated grant signature authority shall give the agency at least 30 days written notice of intent to reduce, suspend, or terminate a grant. OSM must send this notice by certified mail, return receipt requested. OSM shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) OSM shall afford the agency opportunity for consultation and remedial action before reducing or terminating a grant.

(3) The OSM official delegated grant signature authority shall notify the agency of the termination, suspension,

or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, the agency shall retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(5) Upon receiving notification of OSM's intent to terminate the grant, the agency shall not make any new commitments without OSM's approval.

(6) OSM may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A-87.

(7) Either OSM or the agency may terminate or reduce a grant if both parties agree that continuing the program would not produce beneficial results commensurate with the further expenditure of funds. Such a termination for convenience shall be handled as an amendment and shall be signed by the OSM official delegated grant signature authority.

(d) *Appeals.* (1) Within 30 days of OSM's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Director.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Director shall decide the appeal within 30 days of receipt.

(2) Within 30 days of the Director's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Secretary shall act upon the appeal within 30 days of receipt.

16. Section 886.19 is revised to read as follows:

**§ 886.19 Audit.**

The agency shall arrange for an independent audit pursuant to guidance provided by the General Accounting Office and the Office of Management and Budget.

17. Section 886.20 is revised to read as follows:

**§ 886.20 Administrative procedures.**

The agency shall follow administrative procedures governing accounting, payment, property, and related requirements contained in 43 CFR part 12, subpart C and use the property form specified by OSM and

approved by the Office of Management and Budget.

18. Section 886.21 is amended by revising paragraph (a) to read as follows:

**§ 886.21 Allowable costs.**

(a) Allowable reclamation costs include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of the acquisition of land.

\* \* \* \* \*

19. Section 886.22 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 886.22 Financial management.**

(a) The agency shall account for grant funds in accordance with the requirements of 43 CFR part 12, subpart C. Accounting for grant funds must be accurate and current.

\* \* \* \* \*

(d) When advances are made, they should be made as closely as possible to the actual time of the disbursement.

\* \* \* \* \*

20. Section 886.23 is revised to read as follows:

**§ 886.23 Reports.**

(a) For each grant, the agency shall annually submit to OSM reporting forms specified by OSM.

(b) At the completion of each grant, the agency shall submit a completed Form OSM-76 and any other closeout reports specified by OSM.

21. Section 886.24 is amended by revising paragraph (a) and deleting its designation as (a); revising paragraph (a)(1) and redesignating as (a); redesignating paragraph (a)(2) as (b); and by removing the existing paragraph (b) to read as follows:

**§ 886.24 Records.**

The agency shall maintain complete records in accordance with 43 CFR part 12, subpart C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly—

(a) The amount and disposition of all assistance received for the program; and

(b) \* \* \*

22. Section 886.25 is added to read as follows:

**§ 886.25 Special Indian lands procedures.**

(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations

arising from past mining practices and begin reclamation of other areas determined to have high priority on such lands.

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

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

(d) If a proposal is made by an Indian tribe and approved by the Director, the Tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to OSM under § 872.11(b)(5).

(e) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

**PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS**

23. The authority citation for part 887 is revised to read as follows:

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

24. Section 887.3 is revised to read as follows:

**§ 887.3 Authority.**

The Director is authorized to approve or disapprove applications for grants up to a total amount of \$3,000,000 for each State with an approved State reclamation plan provided moneys are available under § 872.11(b) of this chapter and Section 402(g)(1) of Pub. L. 95-87 (30 U.S.C. 1232).

25. Section 887.10 is revised to read as follows:

**§ 887.10 Information collection.**

The collections of information contained in 30 CFR part 887 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1029-0107. The information will be used to grant funds to State regulatory authorities and Indian tribes to administer their subsidence insurance program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.* Public reporting burden for this information is estimated to average 40 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 aspect 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, N.W., Room 640 NC, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029-0107), Washington, D.C. 20503.

26. Section 887.11 is revised to read as follows:

**§ 887.11 Eligibility for grants.**

A State is eligible for grants under this part if it has a State reclamation plan approved under part 884 of this chapter and if it has funds available under § 872.11(b) of this chapter and Section 402(g)(1) of SMCRA, as amended, 30 U.S.C. 1232.

27. Section 887.12 is amended by revising paragraph (a), the introductory sentence of paragraph (b), and paragraph (e) to read as follows:

**§ 887.12 Coverage and amount of grants.**

(a) An agency may use moneys granted under this part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A-87. Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by applicable State law provided use of such moneys is consistent with the Grants Management Common Rule (43 CFR part 12, subpart C).

(b) The grant application shall be submitted under the procedures of 30 CFR part 886 and contain the following:

\* \* \* \* \*

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

28. Section 887.13 is revised to read as follows:

**§ 887.13 Grant period.**

The grant funding period shall not exceed eight years from the time the grant is approved by OSM. Unexpended funds remaining at the end of any grant period shall be returned according to the 43 CFR part 12, subpart C.

**PART 888—[REMOVED]**

29. Part 888 is removed.

[FR Doc. 95-4259 Filed 2-21-95; 8:45 am]

**BILLING CODE 4310-05-M**