

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Parts 700, 875, 879, 884, and 885**

[Docket ID: OSM–2012–0010]

RIN 1029–AC66

**Abandoned Mine Land Reclamation Program; Limited Liability for Noncoal Reclamation by Certified States and Indian Tribes****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are proposing changes to our abandoned mine land (AML) reclamation program regulations under title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). If finalized, the changes would allow states and Indian tribes that have certified correction of all known coal AML problems within their jurisdiction to receive limited liability protection for certain noncoal reclamation activities.

**DATES:** Electronic or written comments: We will accept written comments on the proposed rule on or before April 8, 2013.

**Public hearings:** If you wish to testify at a public hearing, you must submit a request before 4:30 p.m., Eastern Time, on March 8, 2013. We will hold a public hearing only if there is sufficient interest. Hearing arrangements, dates and times, if any, will be announced in a subsequent **Federal Register** notice. If you require reasonable accommodation to attend a public hearing, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** You may submit comments by any of the following methods:

**Federal eRulemaking Portal:** <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM–2012–0010. Please follow the online instructions for submitting comments.

**Mail/Hand-Delivery/Courier:** Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue NW., Washington, DC 20240. Please include the Docket ID: OSM–2012–0010.

You may submit a request for a public hearing on the proposed rule to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. If you require reasonable accommodation to

attend a public hearing, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Alfred Whitehouse, Chief, Reclamation Support Division, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone: 202–208–2788.

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**I. How does the AML reclamation program operate?**

Congress established the AML reclamation program in title IV of SMCRA to remedy the extensive environmental damage caused by past coal mining activities. In general, the program is targeted toward reclaiming abandoned mine lands and waters adversely impacted by inadequately reclaimed surface coal mining operations on lands that were not subject to the reclamation requirements of SMCRA. Health, safety, and environmental problems associated with abandoned mine lands include surface and ground water pollution, entrances to open mines, water-filled pits, unreclaimed or inadequately reclaimed refuse piles and minesites (including some with dangerous highwalls), sediment-clogged streams, damage from landslides, and fumes and surface instability resulting from mine fires and burning coal refuse. Restoration activities under the abandoned mine reclamation program correct or mitigate these problems. While the central focus of the AML program has been to address coal-related health, safety and environmental problems, noncoal mining-related problems also are eligible to receive funding under certain conditions.

A core element of the national AML program is the reclamation plan developed by each qualifying state and tribe. Under section 405(b) of SMCRA, states (and, after amendment of the Act in 1987, the Navajo, Hopi, and Crow Indian tribes) that have coal lands and waters eligible for reclamation under title IV of SMCRA may submit a proposed plan to OSM for review. If the proposed plan demonstrates that the state or tribe has qualifying lands and

waters along with the necessary legislative authority and administrative components to adequately administer the program, we will approve the plan under section 405(d) of SMCRA. Currently, 25 states and the 3 Indian tribes have approved AML reclamation plans, which allows them to submit applications for grant funding under section 405(f) of SMCRA.

During the first 30 years of the program, states and tribes with approved plans received grants and conducted reclamation activities to address AML-eligible problems. During this period, the states of Louisiana, Montana, Texas, and Wyoming and the Crow Tribe, the Hopi Tribe, and the Navajo Nation completed reclamation of all known coal-related AML problems within their jurisdiction and certified to that fact in accordance with section 411(a) of SMCRA. Once certified, these states and tribes were authorized to expend title IV grant funding on the reclamation of qualifying noncoal AML problems and on the construction of public facility projects under the provisions of paragraphs (b) through (g) of section 411 of SMCRA. In particular, section 411(b) provides a formal structure for addressing noncoal problems through identification and prioritization.

In contrast, uncertified states have generally focused on completing coal-related reclamation projects, although they also have the option to address noncoal problems in limited circumstances as provided under section 409 of SMCRA.

In 2006, the Tax Relief and Health Care Act of 2006, Public Law 109–432 (the “2006 amendments”) substantially modified the AML reclamation program in title IV of SMCRA. The 2006 amendments altered AML fee collection rates on the industry, increased program funding, ended the appropriation process for AML grants to states and tribes, provided general Treasury revenues as a new source of funding, targeted funding in uncertified states more directly at addressing high priority coal-related AML problems, and made a number of procedural changes—such as requiring OSM approval for revisions to the national inventory of AML problems. Please refer to the final rule published November 14, 2008 (the “2008 rule”) <sup>1</sup> for a more complete description of the program changes resulting from the 2006 amendments.

Prior to the 2006 amendments, section 402(g)(1) of SMCRA allocated 50 percent of the total reclamation fees paid by coal mine operations located

<sup>1</sup> 73 FR 67576–67647.

within each state or tribe to that state or tribe. These allocations within the AML Fund are referred to as “State share” or “Tribal share” funds. However, distribution of the State share and Tribal share funds was subject to annual appropriation, and the full amount allocated each year was not always appropriated.

Among other changes, the 2006 amendments barred certified states and tribes from receiving their State share and Tribal share moneys from the AML Fund.<sup>2</sup> Under the 2006 amendments, instead of receiving moneys from the AML Fund, they receive two new types of funding—prior balance replacement funds and certified in lieu funds—paid from the general funds of the United States Treasury and not subject to annual appropriations. Prior balance replacement funds are authorized by section 411(h)(1) of SMCRA; they either have been or will be distributed in seven equal annual installments beginning in fiscal year 2008.<sup>3</sup> The total of the seven payments equals the difference between the amount of the State share or Tribal share that was allocated to each state or tribe and the amount that was actually appropriated before the 2006 amendments. Certified in lieu funds are authorized by section 411(h)(2) of SMCRA and are annual payments from the general funds of the United States Treasury in an amount equal to 50 percent of the reclamation fees paid by coal mining operations within each certified state or tribe.<sup>4</sup>

Our 2008 rule revised our regulations to conform to the 2006 amendments. Of note, in accordance with the 2006 amendments, the 2008 rule gave certified states and tribes greater latitude in how they are allowed to use the new funding that they receive. In particular, while certified programs are still required to address known and newly discovered coal problems in a timely manner, funding not needed to address coal problems may be used for a wider range of purposes than previously allowed, including purposes not related to noncoal reclamation or public facility projects under paragraphs (b) through (g) of section 411 of SMCRA.

## II. What is the limited liability provision of SMCRA?

On November 5, 1990, SMCRA was amended to extend fee collection authority and to revise both the way the AML Fund moneys are allocated and the purposes for which AML Fund moneys may be used. Among the many

changes made to title IV at that time, a new section 405(l) was added, which specifies 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. The new paragraph applies to all Federal laws. It does not preclude liability for gross negligence or intentional misconduct by a state or Indian tribe. States and tribes value the protection provided by this provision because state and tribal program officials routinely make a broad range of decisions concerning site selection and abatement of serious health, safety, and environmental problems. The limited liability provision provides them a degree of protection as they make difficult choices with limited program funding.

On May 31, 1994, we adopted 30 CFR 874.15 and 875.19 to implement section 405(l) of SMCRA.<sup>5</sup> The language in the two sections is identical—30 CFR 874.15 applies to uncertified programs, while 30 CFR 875.19 applies to certified programs.

## III. Why are we proposing rule changes related to the limited liability provision?

We propose to revise our rules in response to concerns that our 2008 rule may have created a disincentive for certified States and tribes to conduct noncoal reclamation activities. In the 2008 rule, we did not change the language of either 30 CFR 874.15 or 875.19. However, we did conclude that certified programs expending the two new sources of funding made available by the 2006 amendments under sections 411(h)(1) and (h)(2) of SMCRA (prior balance replacement funding and certified in lieu funding, respectively) cannot conduct a noncoal reclamation program under paragraphs (b) through (g) of section 411 of SMCRA.<sup>6</sup> As a consequence of this determination, any noncoal reclamation project would not be subject to the provisions of 30 CFR part 875, which includes the limited liability provision.

We received a number of comments on the application of the limited liability provision to certified programs during our 2008 rulemaking. The Interstate Mining Compact Commission (IMCC), the National Association of Abandoned Mine Land Programs (NAAML), and one state commented that “certified AML programs should not be required to follow all of Part 875 to enjoy the protection of the limited

liability provisions of § 875.19.” Since we adopted the 2008 rule, program officials in certified states and tribes have continued to express concern over the loss of limited liability protection for noncoal reclamation projects.<sup>7</sup> This proposed rule is designed to address those concerns and restore limited liability protections for noncoal reclamation and public facility projects conducted pursuant to a SMCRA noncoal program and paragraphs (b) through (g) of section 411 of SMCRA.

## IV. How do we propose to revise our rules?

We are proposing to revise our regulations to clarify that certified states and tribes, using prior balance replacement funds and certified in lieu funds, may voluntarily conduct noncoal reclamation programs under the provisions of 30 CFR subchapter R and receive limited liability protection for projects completed under those provisions. Our proposed revision would retain the ability of certified states or tribes to expend title IV moneys on projects that are not part of a SMCRA noncoal reclamation program, but they would not receive limited liability protection for work on those projects.

SMCRA section 405(l) protects the states or tribes from liability “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 a[n] approved State abandoned mine reclamation plan \* \* \*.” 30 U.S.C. 1235(l). Under current regulations, certified states and tribes have very few SMCRA-related administrative duties when they conduct noncoal reclamation but they also do not receive limited liability protection for any of their work because that work is not considered to be part of a noncoal reclamation program conducted in accordance with an approved State abandoned mine reclamation plan. 30 CFR 875.19; see also 73 FR 67613–67614. To afford

<sup>7</sup> See, e.g., Statement of Madeline Roanhorse, Manager, AML Reclamation/UMTRA Department, Navajo Nation On Behalf of the National Association of Abandoned Mine Land Programs re Oversight Hearing on “The Effect of the President’s FY 2013 Budget and Legislative Proposals for the Office of Surface Mining on Private Sector Job Creation, Domestic Energy Production, State Programs and Deficit Reduction” before the House Energy and Mineral Resources Subcommittee, March 6, 2012, p. 7 (“Without this limited liability protection, these states and tribes potentially subject themselves to liability under the Clean Water Act and CERCLA for their AML reclamation work. Nothing in the 2006 Amendments suggested that there was a desire or intent to remove these liability protections, and without them in place, certified states and tribes will need to potentially reconsider at least some of their more critical AML projects.”).

<sup>2</sup> 30 U.S.C. 1231(f)(3)(B).

<sup>3</sup> 30 U.S.C. 1240a(h)(1).

<sup>4</sup> 30 U.S.C. 1240a(h)(2).

<sup>5</sup> 59 FR 28172.

<sup>6</sup> 73 FR 67611.

certified programs the protections of the limited liability provision at least in connection with some of their work, we propose to allow them the option of using their title IV moneys on SMCRA noncoal reclamation programs that will be part of an approved state abandoned mine reclamation plan; that is, on programs operating under paragraphs (b) through (g) of section 411 of SMCRA and that follow the requirements of 30 CFR subchapter R.

Under such a noncoal reclamation program, limited liability protections would extend not only to site reclamation activities but also to program administration, site development, environmental management, and other actions taken and not taken in support of SMCRA noncoal reclamation activities. Because the protections only extend to “action taken or omitted in the course of carrying out” an approved state or Indian tribe abandoned mine reclamation plan, there must be a clear nexus between the action or inaction and an approved state or abandoned mine reclamation plan for the protections to apply.

In the 2008 rule, we concluded that certified programs could not conduct noncoal reclamation programs under 30 CFR part 875 using prior balance replacement funds or certified in lieu funds.<sup>8</sup> The 2008 rule allowed certified states and tribes to use prior balance replacement funds for any purpose specified by the state legislature or tribal council under 30 CFR 872.31 and certified in lieu funds for any purpose under 30 CFR 872.34. However, we also determined that the 2006 amendments did not authorize certified states and Indian tribes to use their title IV funding for projects conducted under paragraphs (b) through (g) of section 411 because those paragraphs specifically refer to the use of State share and Tribal share funds, which certified states and tribes no longer receive.

Although we adopted this approach in the 2008 rule, we recognized at the time that SMCRA was not clear and we considered possible alternatives. First, in our proposed rule that preceded the 2008 rule, we proposed that certified states and tribes could choose to use their title IV moneys for noncoal reclamation and public facility projects under 30 CFR part 875.<sup>9</sup> Second, we presented an alternative that would have required certified states and tribes to spend their certified in lieu funds for

noncoal reclamation and public facility projects under part 875.<sup>10</sup>

We now propose an approach to the use of prior balance replacement funds and certified in lieu funds that is similar to the one we proposed in 2008—*i.e.*, that certified states and tribes can choose to use their title IV moneys for noncoal reclamation and public facility projects under 30 CFR part 875. We do not believe that we need to amend the regulatory language in part 872 to effect this change—the current language is broad enough to allow certified states and tribes to expend their money on noncoal reclamation and public facility projects under 30 CFR subchapter R if they choose to do so. We invite comment as to whether we need to make any modifications to part 872, particularly §§ 872.31(a) and 872.34, to ensure that certified states and tribes receive limited liability protection for projects completed under a SMCRA noncoal program. Although we are not proposing changes to part 872, we are proposing revisions to other parts, as described further below.

#### *A. How do we propose to revise 30 CFR Part 700: General?*

##### 1. Section 700.5: Definitions

We propose to revise § 700.5 to add a definition for the term “SMCRA” to improve the clarity of existing regulations. The term “SMCRA” means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87).

#### *B. How do we propose to revise 30 CFR Part 875: Certification and Noncoal Reclamation?*

We propose to revise this part to clarify that certified states and tribes may voluntarily conduct noncoal reclamation programs under the provisions of 30 CFR subchapter R and receive limited liability protection for projects completed under those provisions. In general, our proposed revisions set forth the procedures that certified states and tribes would be required to follow if they voluntarily choose to use their title IV funding for a noncoal reclamation project or public facility project under SMCRA and 30 CFR subchapter R. These procedures relate to the eligibility of sites and restrictions related to land acquisition and management, lien determinations, and contractor eligibility. In addition, this part would make clear that certified states and Indian tribes would receive limited liability protection under 30 CFR 875.19 for authorized noncoal

reclamation and supporting administrative and programmatic activities.

##### 1. Section 875.11: Applicability

We propose to revise § 875.11(b)(2) to provide that under part 875 certified programs may use prior balance replacement funds and certified in lieu funds not only to engage in coal reclamation projects that are necessary to maintain certification but also to conduct noncoal reclamation programs.

During our previous rulemaking related to the 2006 amendments, we proposed similar language under § 875.11(b)(2) that would have given certified states and Indian tribes the choice to expend prior balance replacement funds or certified in lieu moneys on noncoal reclamation programs under SMCRA.<sup>11</sup> The majority of comments we received on this proposal were critical because certified states and tribes would have had to comply with the reclamation priorities for noncoal programs, which are set out in § 875.15. According to commenters, this would have placed “unsupported and illegal restraints” on their use of prior balance replacement funds and certified in lieu funds. The commenters recommended that the proposed language be revised to ensure that certified states and Indian tribes did not have to comply with all the provisions of part 875 and to clarify that certified states and tribe can elect to do noncoal reclamation outside the framework of that part.

Based on these comments and upon further analysis of our approach, the final rule implementing the 2006 amendments did not carry forward the option in proposed § 875.11(b)(2) that would have allowed certified states and Indian tribes the choice to expend prior balance replacement funds and certified in lieu funds on noncoal reclamation programs under SMCRA. Thus, the existing rule only requires certified states and tribes to follow part 875 when they expend prior balance replacement funds and certified in lieu funds on coal reclamation necessary to maintain their certification. In other words, certified states and tribes are no longer required to follow part 875 if they use their title IV funding for noncoal reclamation and public facility projects because we determined that those projects would not be completed under SMCRA and its regulations.

In this proposed rule, we are reexamining our 2008 decision on this topic. We are considering giving certified states and tribes the choice to

<sup>8</sup> 73 FR 67610.

<sup>9</sup> 73 FR 35236, June 20, 2008.

<sup>10</sup> 73 FR 35228, June 20, 2008.

<sup>11</sup> 73 FR 35259, June 20, 2008.

use their title IV moneys under a SMCRA noncoal program under part 875. We believe this proposed rule would be consistent with section 411(h)(1) of SMCRA, which grants the state legislatures and tribal councils discretion as to how prior balance replacement funds may be spent because the state legislature or tribal council could direct these funds to be expended pursuant to a SMCRA noncoal program. In addition, we believe that optional coverage would be consistent with section 411(h)(2) of SMCRA, which contains no specific instruction on the use of certified in lieu funds and does not place any restrictions upon them. Therefore, under the proposed rule, certified states and tribes would be able to direct, if they so choose, some or all of these funds to be used for a SMCRA noncoal reclamation program consistent with section 411 of SMCRA and 30 CFR part 875. This approach would also be consistent with our view that states and tribes may use these funds for coal reclamation to maintain certification, a use also not explicitly contained in either paragraph (h)(1) or paragraph (h)(2) of section 411 of SMCRA.

Finally, by allowing certified states and tribes the latitude to conduct activities under 30 CFR part 875, we would continue to promote the AML reclamation plan as a central component of noncoal reclamation. Under paragraphs (b) through (g) of section 405 of SMCRA, states and tribes may receive title IV grants only when they have received program approval based upon a complete reclamation plan. Certified states and tribes have approved reclamation plans, and they operate under and maintain these approved plans in order to receive title IV funding. Reclamation activities carried out pursuant to a SMCRA noncoal program would enjoy the limited liability protections of section 405(l) of SMCRA because the work would be conducted pursuant to an approved reclamation plan that conforms to paragraph (e) and (f) of section 405 of SMCRA.

## 2. Section 875.16: Exclusion of Certain Noncoal Reclamation Sites

We propose to revise this section to prohibit the reclamation of sites designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA)<sup>12</sup> or listed for remedial action under the Comprehensive Environmental Response Compensation and Liability

Act of 1980 (CERCLA)<sup>13</sup> by certified states or tribes using prior balance replacement funds or certified in lieu funds if they conduct the reclamation as a component of a voluntary noncoal reclamation program under Part 875. SMCRA clearly prohibits “[s]ites and areas designated for remedial action pursuant to [UMTRCA] or which have been listed for remedial action pursuant to [CERCLA]” from being “eligible from expenditures from the Fund under” section 411 of SMCRA.<sup>14</sup>

In the 2008 rule, one modification we made to this provision was to explicitly allow certified states and Indian tribes to expend their title IV moneys for UMTRCA and CERCLA sites so as to be consistent with our changes in 30 CFR part 872 that allowed these states and Indian tribes maximum flexibility to expend their prior balance replacement funds and certified in lieu funds.

Our proposed revision to 30 CFR 875.16(b) would continue to prohibit a certified state or Indian tribe from expending money left over from the pre-2008 distributions of funds from section 402(g)(1) on UMTRCA and CERCLA sites. The section would be revised to prohibit the expenditure of prior balance replacement funds and certified in lieu funds for UMTRCA and CERCLA sites if the state or tribe chooses to conduct a SMCRA noncoal program. However, our proposed revision would also retain the ability of a certified state or tribe to expend title IV moneys on UMTRCA and CERCLA sites if those projects are completed outside the scope of a SMCRA noncoal reclamation program. In such an instance, the certified state or tribe would not receive limited liability coverage under SMCRA.

## 3. Section 875.17: Land Acquisition Authority—Noncoal

Consistent with our proposal to allow certified programs to voluntarily use prior balance replacement funds and certified in lieu funds to conduct a noncoal reclamation program under part 875, we propose to revise this section to confirm that the requirements specified in parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) also apply to a state's or tribe's SMCRA noncoal program conducted voluntarily under part 875.

## 4. Section 875.19: Limited Liability

We propose to revise this section to clarify that no certified state or Indian tribe conducting noncoal reclamation

activities under the provisions of part 875 is 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.

In our 2008 rule, we did not revise this section, but we did note that under the proposed rule, the only scenario in which a certified state or Indian tribe could avail itself of the limited liability provision of § 875.19 would be if it decided to maintain a noncoal reclamation program under section 411 of SMCRA. As previously discussed, we did not select our proposed approach at that time. Under the approach we adopted in the 2008 rule, we concluded that because prior balance replacement funds and certified in lieu funds could not be used to fund a noncoal reclamation program under SMCRA, section 405(l) of the Act did not support an interpretation that limited liability protection extends to noncoal reclamation programs that are not conducted under title IV of SMCRA.

Our current proposal is consistent with the approach we proposed, but did not adopt, in 2008. It is also consistent with section 405(l) of SMCRA, as this section would not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or Indian tribe that is carrying out a SMCRA noncoal program in accordance with its approved reclamation plan.

## 5. Section 875.20: Contractor Eligibility

We propose to revise this section to clarify that certified states and tribes that voluntarily conduct noncoal reclamation activities under part 875 must comply with the contractor eligibility requirements. This section also applies to certified states and tribes that conduct coal reclamation to maintain certification.

## C. How do we propose to revise 30 CFR Part 879: Acquisition, Management, and Disposition of Lands and Water?

Because this proposed rule modifies part 875 to allow certified states and tribes to voluntarily conduct noncoal reclamation activities under SMCRA, we are proposing changes to part 879 so that our procedures related to acquisition, management, and disposition of land and water are consistent with this option. In general, with this proposed rule, certified states and Indian tribes that voluntarily conduct noncoal reclamation activities under part 875 would be required to follow the provisions of part 879. To ensure that any moneys received from

<sup>12</sup> 42 U.S.C. 7901 *et seq.*

<sup>13</sup> 42 U.S.C. 9601 *et seq.*

<sup>14</sup> 30 U.S.C. 1240a(d).

the disposition of lands and waters are returned to the reclamation program, we also propose to revise § 879.15 to specify that all moneys received by a certified state or tribe in the context of the noncoal reclamation program must be handled in accordance with § 885.19.

#### 1. Section 879.1: Scope

We propose to revise this section to clarify its applicability to certified states and tribes that choose to conduct noncoal reclamation activities under part 875.

#### 2. Section 879.11: Land Eligible for Acquisition

We propose to revise § 879.11(a) and 879.11(b) to clarify that these sections apply to a certified state or Indian tribe that chooses to conduct noncoal reclamation activities under part 875. In addition, as we reviewed our regulations to implement this proposed rule, we determined that existing § 879.11 was not as clear as we intended, and we propose to restructure § 875.11(a) to confirm that OSM must execute a written approval and make the findings required by § 875.11(a)(1) and 875.11(a)(2) when we acquire land.

#### 3. Section 879.15: Disposition of Reclaimed Land

We propose to revise § 879.15(h) to specify that moneys received from disposal of land by certified states and tribes conducting a SMCRA noncoal reclamation program under part 875 must be handled as unused funds in accordance with § 885.19.

#### *D. How do we propose to revise 30 CFR part 884: State Reclamation Plans?*

We propose to revise part 884 to specify the contents of a proposed reclamation plan for certified states and Indian tribes. In our 2008 rule, we revised § 884.13 to reflect the view that the contents of a reclamation plan for a certified program should be very limited because certified programs would largely be expending the two new sources of funding outside of the parameters of the part 875 noncoal reclamation requirements. Specifically, our 2008 rule established that a reclamation plan for a certified program was only required to contain two components; the Governor's designation under § 884.13(a) and a commitment to address coal problems in accordance with §§ 875.13(a)(3) and 875.14(b).

In this proposed rule, we are revisiting our decision in the 2008 rule and proposing to revise § 884.13 to require that, if certified programs maintain reclamation plans, those plans must contain all of the components of

§ 884.13(a) through (f)—instead of just the two aforementioned components. This change would be consistent with our position that to acquire the limited liability protections under section 405(l) of SMCRA, certified states and Indian tribes must conduct reclamation activities pursuant to an approved reclamation plan that conforms to paragraphs (e) and (f) of section 405. We believe that maintenance of a reclamation plan that fully conforms to paragraphs (e) and (f) of section 405 would ensure that a certified program has all of the necessary legal, administrative, and procedural components to conduct coal reclamation under part 874, to conduct noncoal reclamation under part 875, and to gain the limited liability protections under section 405(l) of SMCRA.

#### 1. Section 884.13: Content of Proposed State Reclamation Plan

As discussed above, we propose to revise this section to clarify that the reclamation plan for a certified program must contain all of the information identified in the section as well as a commitment to address eligible coal problems found or occurring after certification as required in §§ 875.13(a)(3) and 875.14(b). The revision would ensure that reclamation plans for certified programs will contain all of the necessary legal, administrative, and procedural components to conduct coal reclamation to maintain certification and to conduct voluntary noncoal reclamation activities under part 875.

#### *E. How do we propose to revise 30 CFR part 885: Grants to Certified States and Indian Tribes?*

We are proposing changes in this part consistent with our proposal that certified states and tribes may voluntarily use prior balance replacement funds and certified in lieu funds for noncoal reclamation under part 875.

To implement our proposal, we would need to revise several regulations in this part to ensure that certain grants management and programmatic activities are conducted properly. In particular, we propose to revise § 885.12 to expand the list of activities eligible for certified program funding, and we are proposing revisions to § 885.16 in order to ensure that the appropriate project authorization and environmental reviews are conducted for voluntary noncoal reclamation under part 875. Finally, we propose to revise § 885.20 to ensure that we receive the necessary grant information and project reporting

for voluntary noncoal reclamation under part 875.

#### 1. Section 885.12: What can I use grant funds for?

We propose to revise § 885.12(b) to clarify that certified programs may use prior balance replacement funds and certified in lieu funds for noncoal reclamation under section 411 of SMCRA and part 875.

#### 2. Section 885.16: After OSM approves my grant, what responsibilities do I have?

We propose to revise § 885.16(e) to ensure that certified programs that use prior balance replacement funds and certified in lieu funds for noncoal reclamation under part 875 receive a written authorization to proceed with reclamation on individual projects. Our authorization to proceed denotes that both the certified program and OSM have taken all actions necessary to ensure compliance with the National Environmental Policy Act of 1969 (NEPA),<sup>15</sup> and any other applicable laws, clearances, permits, or requirements.

To receive an authorization to proceed from us, a certified state or tribe would be required to follow its approved reclamation plan and conduct administrative and noncoal site development reclamation activities within the regulatory structure provided by 30 CFR subchapter R. Requesting an authorization to proceed from us would be a voluntary action on the part of the certified state or tribe. If we issue an authorization to proceed, the certified state or tribe would qualify for the limited liability protections for that project, including the administrative and programmatic activities directly related to that project. Because certified states and Indian tribes would not be required under this proposed rule to expend their title IV moneys under a SMCRA noncoal program, it would be possible for a certified state or Indian tribe to complete noncoal reclamation or public facility projects outside the parameters of a SMCRA noncoal reclamation program, including projects at CERCLA or UNTRCA sites as provided by other laws. If a certified state or tribe conducts noncoal reclamation activities outside SMCRA, it would not need to request an authorization to proceed from us, and it would not receive limited liability protection for that project.

Requests for authorizations to proceed would be required to contain the information needed for us to complete

<sup>15</sup> 42 U.S.C. 4321 *et seq.*

our review requirements and meet applicable deadlines. Any noncoal reclamation project proposal submitted to us would be required to be consistent with 30 CFR subchapter R and the approved state reclamation plan, and it would be required to be submitted well in advance of any planned construction so as to allow adequate time for review, including a NEPA review in order to fully consider reasonable alternatives.

Certified states and tribes have many years of experience developing noncoal projects with moneys from the AML Fund. As with those projects, submissions for sites to be reclaimed as noncoal reclamation projects with prior balance replacement funding and certified in lieu funding would be required to comply with the requirements of program-related environmental reviews and satisfy AML grant and administrative components. These review elements would include, but would not be limited to, information sufficient for the conduct of assessments under NEPA, the Endangered Species Act, National Historic Preservation Act, and the Clean Water Act. In addition, we would review proposals and conduct oversight activities as needed to ensure that our program requirements related to site eligibility, grants management, and AML Inventory management are met. Proposals that receive our approval as noncoal reclamation projects would be required to be implemented consistent with the scope of work we approve, and we would be required to review changes in project scope or activities that would materially alter the environmental consequences of the reclamation. Generally, noncoal reclamation projects conducted with prior balance replacement funds or certified in lieu funds would be required to adhere to the development, review, and approval components we currently rely on for AML coal sites being addressed to maintain certification.

### 3. Section 885.20: What must I report?

We propose to revise § 885.20 to clarify that certified programs using prior balance replacement funds and certified in lieu funds for noncoal reclamation under part 875 would be required to update the AML inventory for each noncoal reclamation project as it is funded.

## V. How do I submit comments on the proposed rule?

### General Guidance

We will review and consider all comments submitted to the addresses listed above (see **ADDRESSES**) by the close of the comment period (see

**DATES**). The most helpful comments and the ones most likely to influence the final rule are those that include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent federal laws or regulations, technical literature, or other relevant publications and those that involve personal experience. Your comments should reference a specific portion of the proposed rule or preamble, be confined to issues pertinent to the proposed rule, explain the reason for any recommended change or objection, and include supporting data when appropriate.

Please include the Docket ID “OSM–2012–0010” at the beginning of all written comments. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking or considered in the development of a final rule.

### Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Public Hearings

We will hold a public hearing on the proposed rule only if there is sufficient interest to do so. We will announce the time, date, and address for any hearings in the **Federal Register** at least 7 days before the hearing.

If you wish to testify at a hearing, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**, either orally or in writing, by 4:30 p.m., Eastern Time, on March 8, 2013. If no one expresses an interest in testifying at a hearing by that date, we will not hold a hearing. If only a limited number of people express an interest, we will hold a public meeting or teleconference rather than a hearing. We will place a summary of the public hearing in the docket for this rulemaking.

If a public hearing is held, it will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak but wish to do so, you will be allowed to testify after the scheduled speakers. We will end the hearing after all persons

scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony.

### Public Meeting or Teleconference

We may hold a public meeting, in person or by teleconference, in place of a public hearing if there is only limited interest in a hearing. If you wish to meet with us to discuss the proposed rule, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All meetings will be open to the public, and, if appropriate, we will post a notice of the meetings. We will include a written summary of the meeting in the docket for this rulemaking.

## VI. Procedural Matters and Required Determinations.

### A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

At the time of this rulemaking, there are a total of seven certified states and tribes who would be affected by this proposed change. As previously discussed, the rulemaking would remove a disincentive for certified states and tribes to undertake noncoal reclamation. We estimate that, if the proposed rule is adopted, approximately 30 to 60 additional noncoal reclamation projects would be covered by SMCRA's limited liability provision each year. We do not anticipate any additional costs to

the certified states and tribes because this proposed rule creates a voluntary opportunity to redirect existing grant funds to noncoal reclamation under 30 CFR part 875 to obtain the limited liability protections of § 875.19. By offering the incentive of limited liability coverage, the rule should result in more noncoal reclamation projects being undertaken. Increased reclamation would improve the quality of the human environment and eliminate hazardous conditions while improving water quality, air quality, wildlife habitat, community aesthetics, and the visual landscape.

#### *B. Regulatory Flexibility Act*

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA).<sup>16</sup> The proposed revisions would not be expected to have an significant adverse economic impact on the regulated community, including small entities. As previously stated that rule would affect the states of Louisiana, Montana, Texas, and Wyoming and the Crow Tribe, the Hopi Tribe, and the Navajo Nation.

#### *C. Small Business Regulatory Enforcement Fairness Act*

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act.<sup>17</sup> For the reasons previously discussed, the proposed rule would not—

- a. Have an annual effect on the economy of \$100 million or more.
- b. Cause a major increase in costs or prices for consumers, individual industries; federal, state, or local government agencies; or geographic regions.
- c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *D. Unfunded Mandates*

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on state, tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act<sup>18</sup> is not required.

#### *E. Executive Order 12630—Takings*

The proposed rule would not have significant takings implications because it is not a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

#### *F. Executive Order 13132—Federalism*

This proposed rule would not alter or affect the relationship between states and the Federal Government. Therefore, the proposed rule would not have significant Federalism implications. Consequently, there is no need to prepare a Federalism assessment.

#### *G. Executive Order 12988—Civil Justice Reform*

The Office of the Solicitor for the Department of the Interior has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

#### *H. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the proposed revisions would not have substantial direct effects on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Indian Tribe representatives were invited to consult with OSM on our intention to propose a rule extending section 405(l) limited liability protections. In response to a request for consultation, we met with Indian tribe program representatives from the Hopi and Navajo nations on July 10, 2012, at Kykotsmobi, Arizona. The Crow Tribe did not request consultation.

During the consultation with the Hopi and the Navajo Nations, the Tribes stated that they would like the proposed rule to allow a Tribe with an approved AML program to be able to request limited liability protection for some projects but to decline it for others. Our proposed rule reflects this optional approach. As proposed, the rule would allow a certified State or Indian Tribe to request OSM approval for specific noncoal and public facility projects that conform to the reclamation provisions of section 411(b) through (g) of SMCRA and 30 CFR part 875.

The Tribes also indicated that they would prefer that the limited liability protections apply to all projects,

including public facility projects, and that OSM should be involved in the NEPA process because OSM understands the projects and can move quickly through the approval process. Our proposed rule would allow public facility projects to receive limited liability if the Tribe chooses to conform to the reclamation provisions of section 411(b) through (g) of SMCRA and 30 CFR part 875 and to receive the protections of section 405(l).

Similarly, the Tribes requested that the limited liability protection apply to non-coal reclamation projects, as they were concerned that they could face liability if they chose to remediate sites, such as abandoned uranium mines. As proposed, our rule would provide the option for certified States and Tribes to receive limited liability protection for such project; however, we can make no predictions on how other federal agencies might approach the provision when implementing other federal laws.

The Tribes questioned how the proposed rule might affect a Tribe's AML Reclamation Plan. Unfortunately, we are unable to completely answer this question at this time because until the rule is finalized, the effects of any final rule on an approved AML reclamation plan are speculative. If and when the rule is finalized, OSM together with the Tribes would need to conduct a detailed review of the existing approved AML reclamation plans to determine if changes need to be made. Because noncoal reclamation was routinely conducted by certified States and Tribes prior to our rulemaking that implemented the 2006 amendments to SMCRA, it is possible that some or all of the approved AML reclamation plans may already contain sufficient language to implement the rule with only minimal changes.

The Tribes also voiced concern about the extent of limited liability protection provided to public facility projects. The limited liability provision extends protections to public facility projects if they are conducted under section 411(b) through (g) of SMCRA and 30 CFR part 875. The limited liability provision specifies that no State or Indian tribe shall be liable under Federal law for any costs or damages as a result of any action taken or omitted while carrying out an approved abandoned mine reclamation plan. The provision does not preclude liability for gross negligence or intentional misconduct by a state or Indian tribe.

In addition, the Tribes commented on the relationship between SMCRA's limited liability provision and the Department of the Interior's trust responsibilities. More specifically, the

<sup>16</sup> 5 U.S.C. 601 *et seq.*

<sup>17</sup> 5 U.S.C. 804(2).

<sup>18</sup> 2 U.S.C. 1534.



Tribes asked if OSM provides funding to a Tribe, does OSM assume liability? We believe that the limited liability provision of SMCRA and the Department's trust responsibilities are two essentially unrelated matters. The Department's trust responsibilities are a special Federal responsibility, involving the legal responsibilities and obligations of the United States towards Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. In contrast, SMCRA section 405(l) relates to the potential liability of a State or Indian tribe under federal law for costs or damages when carrying out an approved reclamation plan. Indian tribe grant recipients provide commitments to OSM that expenditures of AML funding will comply with federal laws (as well as State, Tribe, and local laws). By providing funding, OSM assumes no liabilities for actions taken by the Tribe or Tribe officials. As proposed, this rule does not affect the Department's trust responsibilities.

*I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not considered a significant energy action under Executive Order 13211 because it is not classified as a significant rule under Executive Order 12866 and because the proposed revisions would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a statement of energy effects is not required.

*J. Paperwork Reduction Act*

This proposed rule contains no new information collection requirements that are not already covered by the Office of Management and Budget (OMB) control numbers: 1029–0059 for 30 CFR Parts 735, 885 and 886 and OSM's grant forms OSM–47, OSM–49 and OSM–51; and 1029–0087 for the OSM–76—Problem Area Description Form used for OSM's Abandoned Mined Land Inventory System (AMLIS). We anticipate that there will not be an increase in the number of respondents who prepare OSM's grant forms, nor an increase in burden per respondent based on this proposed rulemaking.

*K. National Environmental Policy Act*

We have determined that the revisions in this proposed rule are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy

Act,<sup>19</sup> as provided in 43 CFR 46.205(b). The specific categorical exclusion that applies is the exclusion in 43 CFR 46.210(i) for policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature. In this case, extension of the limited liability provision of section 405(l) to noncoal reclamation conducted by certified states is a legal matter. In addition, none of the extraordinary circumstances listed in 43 CFR 46.215 applies.

*L. Information Quality Act*

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554, section 15).

*M. Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed rule clearly stated?
- (2) Does the proposed rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
- (4) Would the rule be easier to understand if it were divided into more but shorter sections (a “section” appears in bold type and is preceded by the symbol “§” and a numbered heading; for example, “§ 700.5 Definitions.”)?
- (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** part of this preamble helpful in understanding the proposed rule?
- (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Information and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may email the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

**List of Subjects**

*30 CFR Part 700*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 875*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 879*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 884*

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

*30 CFR Part 885*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: January 27, 2013.

**Tommy P. Beaudreau,**

*Principal Deputy Assistant Secretary—Land and Minerals Management.*

For the reasons set forth in the preamble, the Department proposes to amend 30 CFR parts 700, 875, 879, 884, and 885 as set forth below.

**PART 700—GENERAL**

- 1. The authority citation for part 700 is revised to read as follows:

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

- 2. Amend § 700.5 by adding a definition for the term “SMCRA” in alphabetical order to read as follows:

**§ 700.5 Definitions.**

\* \* \* \* \*

**SMCRA** means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87), as amended.

\* \* \* \* \*

**PART 875—CERTIFICATION AND NONCOAL RECLAMATION**

- 3. The authority citation for part 875 continues to read as follows:

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

- 4. In § 875.11, revise paragraph (b) to read as follows:

**§ 875.11 Applicability.**

\* \* \* \* \*

(b) If you are a State or Indian tribe that has certified under section 411(a) of the Act—

- (1) You must use State share or Tribal share funds distributed to you under section 402(g)(1) of the Act before

<sup>19</sup> 42 U.S.C. 4332(2)(c).



October 1, 2007, in accordance with this part; and

(2) You may use prior balance replacement funds distributed to you under section 411(h)(1) of the Act, certified in lieu funds distributed to you under section 411(h)(2) of the Act, or both to—

(i) Maintain certification as required by §§ 875.13 and 875.14 of this part; or

(ii) Conduct a noncoal reclamation program in accordance with the requirements of this part.

■ 5. In § 875.16, revise paragraph (b) to read as follows:

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

\* \* \* \* \*

(b) You, the certified state or Indian tribe, may not reclaim sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*) using—

(1) Moneys distributed from the Fund under section 402(g)(1) of the Act.

(2) Prior balance replacement funds distributed to you under section 411(h)(1) of the Act where you are conducting reclamation under the provisions of this part.

(3) Certified in lieu funds distributed to you under section 411(h)(2) of the Act where you are conducting reclamation under the provisions of this part.

■ 6. Revise § 875.17 to read as follows:

**§ 875.17 Land acquisition authority—noncoal.**

The requirements of parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) of this chapter apply to a state's or Indian tribe's noncoal reclamation program conducted under this part except that, for purposes of this section, the term “noncoal” replaces all references to “coal” in parts 877 and 879 of this chapter.

■ 7. Revise § 875.19 to read as follows:

**§ 875.19 Limited liability.**

No certified State or Indian tribe conducting noncoal reclamation activities under the provisions of this part is 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 does 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 will constitute gross negligence or intentional misconduct.

■ 8. Revise § 875.20 to read as follows:

**§ 875.20 Contractor eligibility.**

Every successful bidder for any contract by an uncertified State or Indian tribe under this part, or for any contract by a certified State or Indian tribe to undertake noncoal reclamation under this part, must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. This section does not apply to any contract by a certified State or Indian tribe that is not for coal reclamation or that is not for noncoal reclamation under this part.

**PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATERS**

■ 9. The authority citation for part 879 continues to read as follows:

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

■ 10. Revise § 879.1 to read as follows:

**§ 879.1 Scope.**

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by you, a State or Indian tribe with an approved reclamation program that has not certified completion of coal reclamation or a certified State or tribe conducting noncoal reclamation activities under part 875 of this chapter, or by us. It also provides for the management and disposition of lands acquired by the State, the Indian tribe, or us.

■ 11. In § 879.11, revise paragraphs (a) and (b) to read as follows:

**§ 879.11 Land eligible for acquisition.**

(a)(1) We may acquire land adversely affected by past coal mining practices with moneys from the Fund.

(2) You, an uncertified State or Indian tribe or a certified State or Indian tribe conducting noncoal reclamation under part 875 of this chapter, may acquire land adversely affected by past coal mining practices with moneys from the Fund or with prior balance replacement funds and certified in lieu funds provided under §§ 872.29 and 872.32 of this chapter, provided that we first approve the acquisition in writing.

(3) Before acquiring land under paragraph (a)(1) of this section or approving land acquisition under

paragraph (a)(2) of this section, we must make a finding that the land acquisition is necessary for successful reclamation and that—

(i) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(ii) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. For the purposes of this paragraph, “permanent facility” means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(b) You, an uncertified State or Indian tribe or a certified State or Indian tribe conducting noncoal reclamation under part 875 of this chapter, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds and certified in lieu funds provided under §§ 872.29 and 872.32 of this chapter. We, OSM, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

(1) Before the approval of the acquisition, the reclamation program seeking to acquire the site will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of the reclamation program.

(2) Where an emergency situation exists and a written finding as set forth in § 877.14 of this chapter has been made, we may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

\* \* \* \* \*

12. In § 879.15, revise paragraph (h) to read as follows:

**§ 879.15 Disposition of reclaimed land.**

\* \* \* \* \*

(h) You must return all moneys received from disposal of land under this part to us. We will handle all moneys received under this paragraph as unused funds in accordance with §§ 885.19 and 886.20 of this chapter.

**PART 884—STATE RECLAMATION PLANS**

■ 13. The authority citation for part 884 continues to read as follows:

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

■ 14. In § 884.13, revise the introductory text to read as follows:

**§ 884.13 Content of proposed State reclamation plan.**

You must submit each proposed State reclamation plan to the Director in writing. A proposed plan must include the information set forth in all of the following paragraphs of this section. In addition, a proposed plan for a certified State or Indian tribe must also include a commitment to address eligible coal problems found or occurring after certification as required in §§ 875.13(a)(3) and 875.14(b) of this chapter.

\* \* \* \* \*

**PART 885—GRANTS FOR CERTIFIED STATES AND INDIAN TRIBES**

■ 15. The authority citation for part 879 continues to read as follows:

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

■ 16. In § 885.12, revise paragraph (b) to read as follows:

**§ 885.12 What can I use grant funds for?**

\* \* \* \* \*

(b) You may use grant funds as established for each type of funds you

receive. You may use prior balance replacement funds as provided under § 872.31 of this chapter. You may use certified in lieu funds as provided under § 872.34 of this chapter. You may use the following moneys for noncoal reclamation under section 411 of the Act and part 875 of this chapter:

(1) Moneys that may be available to you from the Fund.

(2) Prior balance replacement funds made available under § 872.31 of this chapter.

(3) Certified in lieu funds as provided under § 872.34 of this chapter.

\* \* \* \* \*

■ 17. In § 885.16, revise the section heading and paragraph (e) to read as follows:

**§ 885.16 After OSM approves my grant, what responsibilities do I have?**

\* \* \* \* \*

(e) If you conduct a coal reclamation project under part 874 of this chapter or noncoal reclamation under part 875 of this chapter, you must not expend any construction funds until you receive a written authorization to proceed with reclamation on an individual project. Our authorization to proceed ensures that both you and we have taken all actions necessary to ensure compliance

with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits, or requirements.

\* \* \* \* \*

■ 18. In § 885.20, revise paragraph (c) to read as follows:

**§ 885.20 What must I report?**

\* \* \* \* \*

(c) You must use the AML inventory to maintain a current list of AML problems and to report annual reclamation accomplishments with grant funds.

(1) If you conduct coal reclamation projects or noncoal reclamation projects under part 875 of this chapter, you must update the AML inventory for each reclamation project as you fund it.

(2) You must update the AML inventory for each reclamation project you complete as you complete it.

(3) We must approve any amendments to the AML inventory after December 20, 2006. We define “amendment” as any coal problems added to the AML inventory in a new or existing problem area.

[FR Doc. 2013–02589 Filed 2–5–13; 8:45 am]

**BILLING CODE 4310–05–P**