

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 875

RIN: 1029-AB99

Abandoned Mine Land Reclamation Notices

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

ACTION: Final rule.

SUMMARY: We are revising our regulations governing the processing of State and tribal grant applications to build public facilities using Abandoned Mine Land (AML) Reclamation Funds. The existing regulations require us to publish a **Federal Register** notice whenever we receive a grant application to build a public facility. We are changing this requirement to one that requires us to publish a notice only when the Director of the Office of Surface Mining (OSM) finds it necessary to ensure adequate public notice of the grant application. We are also correcting errors in four cross-references.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Background and Discussion of the Final Rule
- II. Discussion of the Public Comments Received
- III. How Will This Rule Affect State and Indian Programs?
- IV. Procedural Matters and Required Determinations

I. Background and Discussion of the Final Rule

On June 19, 2002, we published in the **Federal Register** (67 FR 41756) proposed revisions to our regulations at 30 CFR 875.15(f). Those regulations govern public notification for certain non-coal reclamation projects funded by the AML Reclamation Fund. There are 23 States and 3 Indian tribes with approved AML programs. Only 6 of these programs are currently certified for non-coal reclamation projects, *i.e.*, all of their existing known coal-related reclamation objectives have been completed. They are the programs of the States of Louisiana, Montana, Texas and Wyoming, and the Hopi Tribe and Navajo Nation. Only these 6 programs

are, therefore, eligible for 30 CFR part 875 AML funding of non-coal reclamation projects.

The current regulations at 30 CFR 875.15(f) require that the Director publish a **Federal Register** notice announcing the receipt of, and seeking comments on, AML grant applications for non-coal reclamation projects submitted by a governor of a State or the equivalent head of an Indian tribe. The grant applications are requests for funds for the construction of specific public facilities related to the coal or minerals industry in communities impacted by coal or other mineral mining and processing practices. Such construction projects are authorized by section 411(f) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) after all coal-related reclamation objectives have been or are in the process of being completed. For the reasons set forth below, we are making the OSM Director's (hereinafter Director) **Federal Register** notice requirement a discretionary action.

The current regulatory scheme for 30 CFR part 875 provides for a level of public notice that, in most cases, makes the additional **Federal Register** notice of § 875.15(f) redundant. For example, § 875.13 provides for a public notice of a State or Indian tribe's certification that it has completed all existing known coal-related reclamation objectives for eligible lands or waters. Section 875.15(d) then allows the State or Indian tribe to submit to the Director a grant application for AML funding of specific non-coal projects. Section 875.15(e) details the information required in the grant application. In particular, paragraph (e)(7) requires the Director to conduct an analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in the funding request and a copy of all comments received and their resolution by the State or Indian tribe. The 1994 preamble discussion of the § 875.15(e) grant information requirements noted that they were intended to assist the Director in determining whether a "need" exists and whether the public had been "fully appraised and informed" of the grant request. May 31, 1994; 59 FR 28163.

Irrespective of the outcome of the Director's § 875.15(e) public notice determination, § 875.15(f) next requires that the Director prepare a **Federal Register** notice of the State's or Indian tribe's grant application. Following receipt and evaluation of comments generated by that **Federal Register** notice, the Director is to make his/her decision on the grant application. It is not clear why the 1994 rule required the

additional § 875.15(f) **Federal Register** notice of the grant application as there was no preamble discussion of this provision and the enabling statute for § 875.15 does not require the additional notice. May 31, 1994; 59 FR 28163-4; 30 U.S.C. 1240(a).

Accordingly, we are making the **Federal Register** notice required by § 875.15(f) discretionary. We believe that if the Director can determine from the § 875.15(e)(7) information previously submitted by the State or Indian tribe in its grant application that the public has already been "fully appraised and informed" of the grant request, a subsequent § 875.15(f) required **Federal Register** notice covering the same ground would not meaningfully add to the Director's decision-making process. Conversely, if the Director cannot determine from the (e)(7) information submitted by the State or Indian tribe that the public has been "fully appraised and informed" of the grant request, the Director should prepare a § 875.15(f) **Federal Register** notice of the grant request so as to ensure adequate public notice. This final rule will give the Director the option of requiring an additional **Federal Register** notice dependent on the extent of prior (e)(7) public notice. This seems to be a reasonable course. It ensures adequate public notice of the State's or Indian tribe's grant request (with or without a **Federal Register** notice) while avoiding the delay and expense of an unnecessary **Federal Register** notice. We are, therefore, revising § 875.15(f) by inserting the words "if necessary to ensure adequate public notification." The first sentence of § 875.15(f), with inserts italicized, will read as follows: "After review of the information contained in the application, the Director shall, *if necessary to ensure adequate public notification*, prepare a **Federal Register** notice regarding the State's or Indian tribe's submission and provide for public comment."

There are several other practical reasons to reject the current rule's § 875.15(f) requirement of a **Federal Register** notice and to adopt the proposed rule's more flexible approach. The first is that, since the rule was initially promulgated seven years ago, there have been no comments submitted in response to any of the required **Federal Register** notices published by the Director. This fact was brought to light as a result of an inquiry from several of the States and Indian tribes attending the August 2001 AML Conference held in Athens, Ohio, who questioned the need for the Director's required § 875.15(f) **Federal Register**