

Section-by-Section Analysis of Proposed Abandoned Mine Reclamation Program Extension and Reform Act of 2004

This draft bill contains two sections. Section 101 provides the short title for the act, while Section 102 of the draft bill contains various changes to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* The affected sections of SMCRA and the principal changes that this draft bill would make in those sections are summarized below.

Section 401 of SMCRA

Subsection (a) of this section creates the Abandoned Mine Reclamation Fund (referred to as the “fund” or the “AML fund”). Subsection (b) itemizes fund revenues, which consist chiefly of fees assessed on each ton of coal mined. Subsection (c) identifies the purposes for which the fund may be used, primarily for the reclamation of lands and waters adversely affected by the mining of lands for coal prior to the enactment of SMCRA. Subsection (d) governs the availability of monies from the fund. Subsection (e) establishes the fund as an interest-bearing account and specifies how monies in the fund are to be invested.

A new subsection (f) would replace existing section 402(h) and would provide for the transfer of interest earned by the fund to the United Mine Workers of America Combined Benefit Fund (CBF) to cover expenditures for unassigned beneficiaries.

The amendments to Section 401 would—

- Remove existing subsection (c)(2), which authorizes expenditures from the AML fund for the Rural Abandoned Mine Program (RAMP) under the jurisdiction of the Secretary of Agriculture. No funds have been appropriated for this program, which reclaimed lower priority abandoned mine land (AML) sites, since FY 1995. Elimination of this authorization would facilitate the redirection of AML fund expenditures to high-priority sites.
- Modify subsection (c)(5) to authorize expenditures for collection and audit of the black lung excise tax. In concert with changes to sections 402(d) and 414, this revision would synchronize collections and allow OSM auditors to conduct audits of black lung excise tax payments at the same time as they audit payment of reclamation fees under SMCRA. It would promote governmental efficiency, eliminate redundancies, and reduce the reporting and record-keeping burden on industry.
- Modify subsection (c)(6) to eliminate the reference to the Omnibus Budget Reconciliation Act of 1986, which limited research under Title IV to those studies and demonstration projects approved by a committee under the leadership of the Department of the Interior’s former Bureau of Mines, which no longer exists.

The new language would authorize AML fund expenditures for research without review by that now-defunct committee, but only when funds are expressly appropriated for that purpose.

- Modify subsection (c)(10) to replace the reference to section 411 with a reference to new section 415, which authorizes the promulgation of regulations to promote re-mining of abandoned mine lands. Under this draft bill, the Secretary would no longer make grants for noncoal reclamation under section 411 to States and tribes that have been certified as completing reclamation of all eligible coal-related sites. To the extent that Congress appropriates funds, those States and tribes would be able to spend the unappropriated balances of their State-share allocation as of September 30, 2004, for any purpose, including noncoal reclamation, but they would no longer receive grants for that purpose from the fund after that date.
- Modify subsection (d) to dispose of unappropriated balances in various accounts within the AML fund as of September 30, 2004. This provision is needed because the draft bill would change the structure of the fund by eliminating the existing allocation of revenues after that date. All future revenues would be directed into a single account. (See the discussion of changes to sections 402(g) and 403(b).) This draft bill would sweep the unappropriated balances of all prior accounts into the new single account, with the exception of the State-share allocation for each State and Indian tribe under current section 402(g)(1) (50% of all reclamation fees collected from coal mined within that State or tribe), which would be frozen as of September 30, 2004, and would receive no new revenues after that date except for accounts payable as of that date. Subject to appropriation, certified States and tribes (States and tribes that have completed reclamation of all abandoned coal mine lands eligible for reclamation under SMCRA) would receive the unappropriated balance of their State-share accounts (the portion that they have not already received as AML grants as of September 30, 2004) in payments spread over ten years (FY 2005-2014). There would be no restrictions on how those monies are spent, apart from a requirement that they be used to address in a timely fashion any newly discovered health, safety, or general welfare problems arising from coal mines abandoned or inadequately reclaimed prior to the enactment of SMCRA.
- Revise subsection (e) to clarify that the fund's investment policies shall reflect both the needs of the fund and the CBF. Currently, this provision of the Act only requires consideration of the needs of the fund, although the interest is first used to address the needs of the CBF. This clarification in the fund's investment policies will result in a greater ability to meet the needs of the CBF on an annual basis.
- Add a new subsection (f) to govern transfers from the fund to the CBF for health benefits for unassigned beneficiaries. It would replace and improve upon the existing provisions in section 402(h) by removing all restrictions on transfers of interest earned by the fund and by requiring adjustments to reflect actual

expenditures. The new provisions specify that the Secretary shall transfer an amount equal to the trustees' estimate of the CBF's needs for the upcoming fiscal year, with any differences between the estimate and actual expenditures being corrected by adjusting the amount of transfers in subsequent fiscal years. The transfers would be drawn first from interest earned by and paid to the fund during the preceding fiscal year. If that amount proves insufficient, the difference would be made up from any previously untransferred interest earned by and paid to the fund in prior years. No other transfers would be allowed. These measures would protect the integrity of the AML fund while providing additional monies to meet CBF needs for unassigned beneficiaries.

Section 402 of SMCRA

Subsections (a) through (f) of this section establish reclamation fee rates and set forth fee payment and reporting requirements for coal mine operators as well as fee-related audit and enforcement provisions. Subsection (g) establishes allocations of fund revenues, which this draft bill would restrict to revenues received and accounts payable as of September 30, 2004. Existing subsection (h), which this draft bill would revise and move to section 401(f), governs transfers to the CBF.

Principal changes to this section would:

- Modify the reclamation fee rates in subsection (a) in an effort to closely match anticipated appropriations from the fund with anticipated revenues. The proposed changes would reduce fee rates 15 percent for the five years beginning with FY 2005, 20 percent for the next five years, and 25 percent for the remaining years (through September 30, 2018). Those rates are based on an analysis of coal production trends and the resultant impacts on reclamation fee receipts.
- Modify subsection (b) to extend the requirement that operators pay reclamation fees at the statutorily-established rates through September 30, 2018. (Existing subsection (b) sunsets that requirement on September 30, 2004.) The new expiration date reflects the time required to collect revenues sufficient to reclaim all outstanding currently inventoried coal-related health and safety problem sites. Existing language requiring the Secretary to establish a new fee rate after September 30, 2004, based on CBF transfer requirements would be removed.
- Modify subsection (c) to improve its organization and wording, clarify reporting requirements, and remove the requirement that each quarterly fee and production report be notarized. The notarization requirement would be replaced by a requirement that the operator certify, under penalty of perjury, that the information in the report is true, complete, and accurate. Unlike notarization, which is governed by state law, certification can always be accomplished by electronic means. For clarity, the draft bill would also move the provisions governing penalties for false statements, which are currently located in subsection (d)(1), to immediately follow the certification requirement in subsection (c)(3).

Replacement of the notarization requirement with a certification requirement is consistent with the President's e-government initiative in that it would remove a potential impediment to paperless reporting. It also would make SMCRA consistent with the Government Paperwork Elimination Act of 1998 (Pub. L. 105-277), which encourages paperless reporting.

- Add a new subsection (d)(2) to authorize the Secretary to audit compliance with the black lung excise tax payment requirements in concert with audits of reclamation fee payments. This change would promote governmental efficiency and minimize business interruptions by eliminating redundancies.
- Modify paragraph (g) by restricting its scope to reclamation fees or other monies paid or payable to the fund as of September 30, 2004, and to monies appropriated from the fund as of that date. After that date, allocations and disbursements from the fund would be governed by the new provisions in sections 401(d) and 403(b).

Other changes include moving subsection (g)(4) to section 404(b) to reflect the consolidation of the eligible lands requirements in section 404, moving paragraphs (6) and (7) of subsection (g) to section 405(h) to reflect the consolidation of grant-related provisions in that subsection, adding language to subsection (g)(1)(A)(ii) and (B)(ii) to replace language removed from section 411, and moving the minimum program provision in subsection (g)(8) to section 403(b)(1).

- Eliminate subsection (h), as new section 401(f) would govern transfers to the CBF.

Section 403 of SMCRA

Subsection (a) of this section establishes priorities for expenditures from the fund related to the reclamation of abandoned mine lands and mitigation of the adverse impacts of mining. Subsection (c) requires establishment of an inventory of lands and waters eligible for expenditures from the fund.

Subsection (b) currently contains only provisions allowing States and Indian tribes to use up to 30% of the grants that they receive as part of their State-share and historic production allocations for water supply restoration projects. This draft bill would expand subsection (b) to include provisions governing allocations of monies appropriated from the fund after September 30, 2004. Allocation provisions are more logically located in this section, which pertains to fund objectives, than in section 402, which pertains to reclamation fees.

At present, section 402(g) of SMCRA contains the following allocations of monies deposited in the fund:

- Fifty (50) percent of the reclamation fees collected in a State or Indian tribe to that State or tribe. This is known as the State-share allocation.
- Twenty (20) percent to States and tribes based on the amount of coal historically produced therein before August 3, 1977. This is known as the historic production allocation.
- Ten (10) percent to the Rural Abandoned Mine Reclamation Program (RAMP) administered by the Secretary of Agriculture.
- Twenty (20) percent to the Secretary of the Interior for administrative costs, the small operator assistance program, reclamation of abandoned mine lands in States without primacy, conduct of the emergency reclamation program, and making supplemental grants to States and tribes.

This draft bill would eliminate those allocations, thus allowing fund expenditures to be directed to the most serious coal-related problem sites, i.e., those that present a danger to public health or safety. From the enactment of SMCRA through FY 1993, approximately 95% of the monies in grants awarded to States and tribes for reclamation of abandoned mine lands were used to address high-priority coal-related problems (those presenting a danger to public health or safety). However, since that time, the proportion of grant monies spent on high-priority sites has fallen to 64%, a trend that, according to projections showing a continued shift of mining to States with few or no high-priority AML sites, would continue under the existing allocations in section 402(g).

As revised by this draft bill, section 403(b) would reverse that trend by providing that, except for directed donations, all fund revenues after September 30, 2004, would be placed in a single account. No allocations would be made until Congress appropriates money from the fund for the various purposes of Title IV. Once Congress makes an appropriation, the Secretary would use a formula based on historic coal production (the amount of coal mined prior to August 3, 1977, when SMCRA was enacted) in each State or from tribal lands to allocate the amount that Congress appropriates for grants to States and Indian tribes to implement their approved abandoned mine reclamation programs. Use of a formula based on historic production is the best method to assure that funds are directed to reclamation of sites where people are at risk.

As revised by this draft bill, section 403(b) also would include the following provisions:

- No State or tribe with high-priority problem sites would receive an annual allocation of less than \$2 million. This provision would ensure that States and tribes with relatively little historic production receive an amount conducive to operation of a viable reclamation program. This is a revised version of the existing minimum program provision in section 402(g)(8) of SMCRA.
- No State or tribe could receive an annual allocation that would exceed 25 percent of the total amount appropriated for those grants each year. This provision would

ensure that no one State receives too high a percentage of the grants in any one year. Any State whose allocation would otherwise exceed this cap would recoup the difference in the program's latter years as other States and tribes complete their high-priority projects and are no longer eligible for future grants.

- Grant awards made pursuant to allocations under this subsection would be subtracted from each State's and tribe's pre-September 30, 2004 State-share allocations (also referred to as unappropriated State-share balances) until those allocations are exhausted, thus ensuring that each State and tribe will ultimately receive all monies dedicated to it under section 402(g)(1) as of September 30, 2004.
- The existing 30 percent cap on the amount of a State's allocation that may be used for replacement of water supplies adversely affected by past coal mining practices would be removed. This change is consistent with the proposed legislation's goal of focusing fund expenditures on high-priority problems. The lack of potable water is one of the most serious problems resulting from past coal mining practices, particularly in Appalachia.
- The purposes for which the Secretary may spend appropriated monies would be more clearly delineated to include research, supplemental grants to States and tribes, and conducting other activities consistent with Title IV.

Section 404 of SMCRA

This section specifies which lands and waters are eligible for expenditures from the fund. In keeping with the purpose of this section and to consolidate statutory provisions concerning eligible lands, the draft bill would move the provisions in existing section 402(g)(4) to a new section 404(b). Those provisions pertain to the eligibility of sites that were mined and inadequately reclaimed under the initial SMCRA regulatory program (before the bonding requirements of SMCRA took effect) and certain permanent regulatory program bond forfeiture sites with insolvent sureties. The draft bill also would revise some of those provisions to improve their clarity.

Section 405 of SMCRA

This section contains requirements concerning State and tribal reclamation plans and grants to fund implementation of those plans.

Principal changes to this section would:

- Eliminate subsection (f)(5), which pertains to State AML construction grant application requirements for research and demonstration projects, to reflect the fact that the Energy Policy Act of 1992 removed former section 403(a)(4), which means States and tribes no longer have the authority to include research and demonstration projects in their AML construction grant applications.

- Move various grant-related provisions from existing section 402(g)(1)(D), (6), and (7) to subsection (h) of this section, thus consolidating provisions governing grants for the administration of State and tribal AML reclamation programs. New or substantively revised provisions include—
 - Codification of a freestanding requirement from earlier legislation (Pub. L. 97-377, enacted on December 21, 1982) concerning deadlines for OSM to act upon grant applications.
 - A requirement that the Secretary annually reduce State-share allocations (unappropriated State-share balances) under section 402(g)(1) by the amount allocated to States and tribes under section 403(b)(1).
 - Revision of the future reclamation set-aside program provisions, which are currently located in section 402(g)(6)(A), to specify that expenditures from funds set aside under this program may not begin until the State or tribe is no longer eligible to receive an allocation from AML grant appropriations under SMCRA. SMCRA presently allows withdrawals to begin after September 30, 1995, which coincides with the expiration date for reclamation fee collections under the Abandoned Mine Reclamation Act of 1990. The revised date in this draft bill is more consistent with the purpose of this set-aside, which is to provide States and tribes with a source of funding to address abandoned mine land problems that remain or arise after funds are no longer available under SMCRA.
 - Simplification and streamlining of the requirements for the acid mine drainage treatment trust fund set-aside program, including removal of the requirement for Secretarial review and approval of individual treatment plans. The provisions for this set-aside program are currently located in section 402(g)(6) and (7).

Section 406 of SMCRA

This section establishes the Rural Abandoned Mine Program under the auspices of the Secretary of Agriculture. This program is intended to reclaim relatively low priority abandoned mine lands. The draft bill would revise this section by—

- Replacing references in subsection (h) to the Soil Conservation Service with references to the agency's current name, the Natural Resources Conservation Service.
- Adding a new subsection (i) to authorize appropriations for RAMP from funding sources other than the AML fund. This provision would allow RAMP to be

revived without adversely impacting the fund's focus on reclamation of high-priority sites.

Section 408 of SMCRA

This section establishes requirements governing the filing of liens against properties reclaimed by AML reclamation projects if the project results in a significant increase in the value of the property. This draft bill would revise subsection (a) to remove the requirement that, to qualify for an automatic lien waiver, a person must have owned the surface prior to May 2, 1977. Under the revised provision, no lien would be filed against any person who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation. This change would reduce administrative burdens on agencies conducting AML reclamation projects and remove a significant impediment to gaining voluntary right of entry to sites to conduct those projects.

Section 409 of SMCRA

This section establishes conditions under which certain noncoal sites may be reclaimed before the State or tribe completes all coal-related reclamation. The draft bill would revise this section by making conforming changes needed to ensure that the section is consistent with revisions to other sections of the Act.

Section 410 of SMCRA

This section establishes an emergency reclamation program for abandoned mine land problems that present a danger too great to delay reclamation until funds are available under the standard grant application and award process. The draft bill would revise this section by adding a new subsection (c) to authorize the Secretary to adopt regulations requiring States to assume responsibility for the emergency reclamation program. This change would promote efficiency and eliminate a current redundancy in that potential emergencies would be investigated only by the State, not by both the OSM and the State, as occurs under the current program.

Section 411 of SMCRA

This section establishes the conditions under which a State or tribe may certify that it has completed all coal-related reclamation of eligible lands and waters. Under the existing provisions, the State or tribe would then be eligible to spend its State-share allocation on sites impacted by mining for minerals other than coal. The draft bill would amend this section by—

- Revising subsection (a) to clarify that certification means that all coal-related reclamation meeting the priorities of section 403(a)(1)-(3) has been achieved. This subsection previously did not specify which priorities must have been met.

- Deleting existing subsections (b) through (g) as obsolete. Under the new criteria for allocations under section 403(b)(1), certified States and tribes would not be eligible to receive construction grants from the AML fund for noncoal purposes. Therefore, there would no longer be any need for those subsections, which establish eligibility criteria and priorities for reclamation of lands mined for minerals other than coal. However, certified States and tribes could use distributions from the unappropriated balance of their State-share allocations to reclaim those lands, as there would no longer be any restrictions on the use of those funds, apart from a requirement that those funds be used to address any coal-related problems that arise in the future.
- Allowing the Secretary to make the certification for a State or tribe in which all coal-related reclamation work has been completed.

Section 413 of SMCRA

This section enumerates miscellaneous powers of the Secretary. The draft bill would revise this section by correcting an erroneous citation to the Clean Water Act in subsection (d).

Section 414 of SMCRA

This section requires that all departments, boards, commissioners, and agencies of the United States cooperate with the Secretary in administering SMCRA. The draft bill would revise this section by designating the existing language as subsection (a) and by adding a new subsection (b) to authorize the Secretary to collect the black lung excise tax if an agreement can be reached with the Secretary of the Treasury to reimburse OSM for any additional expenses that the bureau may incur. This provision would promote efficient government and reduce unnecessary burdens on the regulated industry by consolidating and synchronizing audit and collection of taxes and fees on coal production.

New Section 415 of SMCRA

This new section would authorize the Secretary to adopt regulations prescribing conditions under which the AML fund could be used to promote remining and thus leverage those funds to achieve more reclamation of abandoned mine lands and waters.

Section 510 of SMCRA

This section establishes requirements relating to the approval or denial of applications for surface coal mining operations. The draft bill would remove the September 30, 2004 expiration date in existing subsection (e) for two current remining incentives, one providing reduced revegetation responsibility periods for remining operations and one providing an exemption from the permit block sanction of subsection (c) for violations resulting from an unanticipated event or condition on lands eligible for remining. For

clarity and ease of reference, existing subsection (e) would be removed and its substantive contents (minus the now-deleted expiration date) moved to subsection (c), which contains all other requirements pertaining to the permit block sanction.

Section 515 of SMCRA

This section establishes performance standards for surface coal mining and reclamation operations. The draft bill would revise subsection (b)(22)(B) of this section to provide clear authority for excess spoil generated by surface coal mining operations to be placed on abandoned mine lands for use in an approved abandoned mine land reclamation project under Title IV. This action would remove any legal cloud over the use of no-cost reclamation contracts involving the placement of such spoil on abandoned mine lands outside the permit boundaries. It would promote cost-effective reclamation of abandoned mine lands in a manner that would benefit the public, the environment, and the operator.

Section 701 of SMCRA

This section contains definitions of terms used in SMCRA. The draft bill would revise the definitions of “unanticipated event or condition” in paragraph (33) and “lands eligible for remining” in paragraph (34) by making conforming changes to cross-references in those definitions and deleting potentially confusing language in the latter definition.