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Office of Surface Mining and Reclamation and Enforcement

30 CFR Parts 707 and 874

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 707 and 874

RIN 1029–AB89

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing revisions to its rules regarding the financing of Abandoned Mine Land reclamation (AML) projects that involve the incidental extraction of coal. Projections of receipts to the AML fund through the year 2004, when the authority to collect fees will expire, strongly indicate that there will be insufficient money to address all problems currently listed in the Abandoned Mine Land Inventory System. Given these limited AML reclamation resources, OSM is seeking an innovative way for AML agencies, working with contractors, to maximize available funds to increase AML reclamation.

The first revision would amend the definition of *government-financed construction* to allow less than 50 percent government funding when the construction is an approved AML project under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The existing definition requires a minimum government contribution of 50 percent to exempt government-financed construction from regulation under SMCRA.

The second revision would add a new section which would require specific consultations and concurrences with the Title V regulatory authority for AML construction projects receiving less than 50 percent government financing. These consultations and concurrences are intended to ensure the appropriateness of the project being undertaken as a Title IV AML project and not under the Title V regulatory program.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern time, on July 27, 1998.

Public hearings: Upon request, we will hold public hearings on the proposed rule at dates, times and locations to be announced in the **Federal Register** before the hearings. We will accept requests for public hearings until 5 p.m., Eastern time, on July 6, 1998. Individuals wishing to attend, but not testify at, any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: If you wish to comment, you may submit your comments on this proposed rule by any one of several methods. You may mail or hand deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also comment via the Internet to OSM's Administrative Record at: osmrules@osmre.gov.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. The address, date and time for any public hearing held will be announced prior to the hearings. Any disabled individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: D.J. Growitz, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20240; *Telephone:* 202–208–2634. E-Mail: dgrowitz@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
A. What is the AML reclamation program?
B. How do States and Indian Tribes implement their programs?
C. Why is the rule being proposed?
D. What is the statutory authority for this rulemaking?
E. How would this proposal work?
F. What is the relationship between the AML agency and the AML contractor?
G. How would this proposed rule facilitate more reclamation under Title IV?
H. Could private organizations (*e.g.*, watershed groups) assist in AML reclamation efforts?
I. Will this proposal result in environmental abuses?
J. How would an AML agency approve reclamation projects under the proposed rule?
K. What would be the consequence of AML contractors removing coal outside the limits authorized by the AML project?
III. Discussion of Proposed Rule
A. What would be the change in definition of *government-financed construction* at section 707.5?
B. What is the change in information collection for section 707.10?
C. What are the information collection requirements for section 874.10?
D. What is the purpose behind proposed section § 874.17?
E. How would the consultation in section 874.17(a) work?
F. What types of concurrences between the AML agency and the regulatory authority would be required in 874.17(b)?
G. Under § 874.17(c) how would the AML agency document the results of the consultation and the concurrences with the Title V regulatory authority?
H. What special requirements would apply for qualifying § 874.17(d) reclamation projects?
I. What must the contractor do if he or she extracts more coal than is specified in § 874.17(b)?
IV. Procedural Determinations

I. Public Comment Procedures

Thirty (30) Day Comment Period

In view of the extensive outreach activity for this rulemaking and in order to expedite the rulemaking, OSM will allow a 30-day comment period in lieu of the usual 60 days. In October 1997, OSM prepared a preproposal draft of the AML Enhancement Rule. The draft proposal, similar to this proposed rule, was distributed extensively. We mailed the draft to over 200 parties, including industry, State agencies, environmental groups, and individuals. We also announced the availability of the document through a press release, notice in the **Federal Register**, OSM web site and fax-on-demand, and we provided for a 30-day comment period. Twenty-four people submitted written comments. In addition to seeking comments through our normal process, we will mail a copy of this proposed rule to each of the earlier commenters.

Written Comments

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

Public Hearings

We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Mr. Growitz (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5:00 p.m., Eastern time, on July 6, 1998. If no one has contacted Mr. Growitz to express an

interest in participating in a hearing at a given location by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, we request that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist us in preparing appropriate questions, we also request, if possible, that each person who plans to testify submit to us at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1029–AB89'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202–208–2847.

We will make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations of businesses, available for public inspection in their entirety.

II. Background

A. What is the AML Reclamation Program?

Title IV of SMCRA established the AML Reclamation Program in response to concern about extensive environmental damage caused by past coal mining activities. The program is funded primarily from a fee collected on each ton of coal mined in the country. This fee is deposited into a special fund, the Abandoned Mine Land Fund (Fund), and is appropriated annually to address abandoned and inadequately reclaimed mining areas where there is no continuing reclamation responsibility by any person under State or Federal law. Under Title IV, the funding of reclamation projects is subject to a priority schedule with emphasis first focused on sites affecting public health, safety, general welfare and property. In contrast, Title V establishes a program for regulating active mining and reclamation.

In most cases, the implementation of both Title IV and Title V authority has been delegated to States. Depending upon each State's internal organizational structure, the Title IV and Title V programs in many cases are carried out by separate State authorities.

Currently, 23 States and 3 Indian Tribes (the Hopi, the Navajo and the Crow) have authority to receive grants from the Fund and are implementing Title IV reclamation programs in accordance with 30 CFR Subchapter R and through implementing guidelines published in the **Federal Register** on March 6, 1980 (45 FR 27123), and revised on December 30, 1996 (45 FR 68777). In States and on Indian lands that do not have a Title IV program, reclamation is carried out by OSM.

B. How Do States and Indian Tribes Implement Their Programs?

State and Indian Tribe AML programs are funded at 100 per cent by OSM from money appropriated annually from the AML Fund. The States and Indian Tribes must submit grant applications in accordance with procedures established by OSM and existing grant regulations found at 30 CFR 886. They must certify with each grant that the requirements of all applicable laws and regulations are met, including the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, and the Endangered Species Act. They may only undertake projects that are eligible for funding as described in either section 404 or section 411 of SMCRA and which meet the priorities established in section 403 of SMCRA. OSM requires that the State Attorney General or other chief legal officer certify that each reclamation project to be undertaken is an eligible site.

Certain environmental, fiscal, administrative and legal requirements must be in place in order for a program to receive grants for reclamation. An extensive description of these requirements can be found at 30 CFR 884, but certain of those are mentioned here to highlight the safeguards the AML program has in place. For example, the agency must have written policies and procedures which outline how they will comply with the requirements of SMCRA and implementing regulations in conducting a reclamation program, how projects will be ranked for reclamation priority, how the public will be given an opportunity to comment on proposed reclamation projects and how it will comply with all applicable Federal and State laws and regulations.

The State or Indian Tribe chooses individual projects based upon the selection criteria in its reclamation program. While these criteria differ among programs, they all consider the priority of the problem, public opinion regarding the project, cost effectiveness, technical feasibility and how the area will be used once reclaimed.

State and Tribal programs seek public input in several ways. For example, some AML programs require that a notice requesting comments on proposed reclamation be published in newspapers of general circulation in the area to be reclaimed. Some publish newspaper notices asking the public to identify potential reclamation sites. Others have public meetings to discuss upcoming reclamation or to identify potential sites. Still other programs seek public input about reclamation activities or potential sites through **Federal Register** notices.

OSM does not approve individual projects, but before construction begins on any project, OSM must ensure that all requirements of the National Environmental Policy Act of 1969 (NEPA) are met. Once OSM assures that the project complies with NEPA, it provides an authorization to proceed on the project.

OSM annually reviews the State and Tribal AML programs to ensure that all program requirements are properly met, including site eligibility, proper financial policies and procedures, and reclamation accomplishments. State and Tribal agencies and OSM also review completed projects to determine the success of AML reclamation. Completed projects may be revisited as part of a site-specific contract, as part of an annual post-construction evaluation, or as otherwise specified under the State or tribal AML reclamation program's maintenance plan.

Further, AML reclamation programs evaluate selected completed AML reclamation projects to determine how effective the overall reclamation program has been. Normally, these evaluations are annual, random samples of many types of reclamation, such as reclaimed subsidence areas, eliminated landslides, sealed openings and removed refuse piles. State and tribal programs would be responsible to prevent abuse of this proposal and could use a monitoring program such as this on all projects completed with less than 50 percent government-financing

to ensure that no problems arise after construction. As warranted in the judgment of the State or tribal AML authority, the frequency of these post-construction evaluations could be reduced.

C. Why Is the Rule Being Proposed?

In some States, there will never be enough public money to abate all of the most serious AML sites—those which present an extreme danger to human health, safety and welfare. The Abandoned Mine Land Inventory estimates the cost to reclaim these most serious sites to be over 2.6 billion dollars. Beyond these highest priority sites, there are thousands of other AML sites which meet the AML eligibility requirements and pose a serious environmental threat. This proposal would facilitate the reclamation of some of these sites at less cost to the government by allowing the sale of coal extracted as an incidental part of the reclamation project to offset the overall cost of reclamation.

D. What is the Statutory Authority for This Rulemaking?

Three sections in SMCRA outline the eligibility requirements for sites being considered for funding under the AML program. They are sections 404, 402(g)(4)(B)(i), and 402(g)(4)(B)(ii). Section 403 of SMCRA establishes priorities for the expenditures from the AML Fund on eligible sites. An otherwise eligible site must meet one of the five priorities of Section 403(a)(1)–(5) in order to be funded.

Section 413(a) of SMCRA provides the Secretary with the ''power and the authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of this [Title IV].''

This proposed rule change is limited in its application to the AML program and is necessary and expedient for OSM and the States and Tribes to more efficiently and effectively carry out the reclamation mandate established by Congress. This statutory authority allows OSM to propose revisions to the AML program that will provide States and Tribes the authority to reduce project costs to the maximum extent practical on abandoned mine sites which have deposits of coal or coal refuse remaining. Thus, the proposed rule change would allow for more program-wide reclamation for the same level of program funding.

In addition, Congress specifically provided under section 528(2) of SMCRA that SMCRA would not apply to activities involving the ''extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority.'' Thus, Title V permitting requirements do not apply to areas from which coal is extracted as an incidental part of a government-financed operation. Because AML reclamation projects are government financed, they qualify as government-financed construction under section 528(2).

E. How Would This Proposal Work?

In many cases eligible AML sites contain recoverable coal that was either left in the ground when the site was abandoned or that remains at the site in the form of coal refuse or other waste. While this coal may have some market value, it is often sufficiently marginal that coal mine operators are not willing to assume the financial burden of mining and reclaiming the site as a permitted Title V operation.

To the extent that the extraction of coal would be necessary to accomplish the reclamation of an approved AML project, the extraction would be incidental to that project. This concept conforms to existing regulation at 30 CFR 707.5. Coal extracted outside the predetermined boundaries or whose extraction is not necessary for reclamation will be subject to Title V permitting provisions. Both the boundaries for reclamation projects, and the amount of coal which must be removed for the prescribed reclamation will be decided by the AML agency and will be clearly identified in the reclamation contract.

Under current regulations and guidelines, proceeds from the sale of incidental coal must be applied to offset the contract price. Coal extraction must be monitored carefully because proceeds must be kept below half the original total price since no more than 50 percent of the total contract can come from non-government sources. In many cases, when the amount gained from the sale of incidental coal exceeds more than 50 percent of the contract, the contract can not be executed and the reclamation is not done. Under the proposal, contractors would be allowed to sell incidental coal and keep the proceeds from the sale of incidental coal. Contractors would reflect this anticipated sale of coal in the bid price for the contract.

Under the proposed rule, less public funds would be required to accomplish the same level of AML reclamation. This would result in the availability of more AML Fund monies for a greater number of AML reclamation projects. Further discussion as to how the proposed rule would facilitate increased reclamation under Title IV can be found in Part II. G. in this preamble.

This proposal would not have any effect on existing AML program requirements. The eligibility for AML projects, the procurement systems which States and Indian Tribes use to contract for AML reclamation, and all Federal or State requirements that otherwise pertain to AML projects would all remain the same. The proposal would not be mandatory for the States or Indian Tribes if they choose not to approve AML projects with less than 50% government-financing.

F. What is the Relationship Between the AML Agency and the AML Contractor?

The relationship between the AML agency and the AML contractor under the proposed rule would remain the same as for any approved reclamation project. Actual construction is usually done under a site-specific contract between the reclamation agency and third-party contractors. These contracts clearly outline the scope of work for each project, the cost, the time frames involved, how the contractor will be paid and penalties for failure to meet the contractual obligations by either party. The content of the contracts, along with bidding and selection procedures, performance bonding requirements and other contractual matters are established within each program in accordance with State or Tribal laws.

The AML agency ensures the contractor's conformance with applicable procedures through site visits and other monitoring techniques. If the contractor does not meet the terms of the contract, the AML agency invokes the penalties contained in the contract and allowed by law.

Each contract sets forth any unique features for the project to be reclaimed and any site-specific criteria for that project. For example, a project to address water quality problems will outline the acceptable pH or sediment levels for the water or sediment, the monitoring period associated with the treatment, whether wetlands will be created, any projected effects on wildlife and any particular environmental impacts at the site or on adjacent properties. Sediment and water quality control plans are to provide for adequate environmental protection during the construction phase of the reclamation project as well as after its completion.

When contracts are written, the AML reclamation agency can require that a project pass specific requirements after

reclamation. For example, a contract could specify that a retaining wall provide protection for a highway for a three-year period. The contract could also specify that, should the highway fail, the contractor must return to repair the damage. The frequency and extent of follow-up by the AML reclamation agency is written into the contract.

The reclamation contract would set forth the amount and extent of incidental coal which could be extracted. AML contractors removing coal outside those contract parameters could be subject to immediate termination of their AML contracts, forfeiture of any performance and reclamation bonds, and all other remedies provided by law for breach of contract.

G. How Would This Proposed Rule Facilitate More Reclamation Under Title IV?

The rule would decrease the cost to the public for reclaiming many abandoned problem sites where reclamation requires the incidental extraction of coal. This coal may be in the form of previously undisturbed coal formations or coal refuse. While the overall cost for the reclamation of these sites would remain the same, in each case the public cost would be reduced under this proposal because a larger percentage of the total project cost, *i.e.*, over 50 percent, would be financed by the AML contractor through sale of the coal recovered from the site.

Also, because certain government-financed AML construction projects would cost the AML agencies less under this proposal than under the current definition of government-financed construction, which requires at least 50 percent government funding, the savings could be allocated to funding additional AML projects. Thus, the AML agency could accomplish more reclamation with the same amount of program funding.

The following example, for illustrative purposes only, outlines the process by which extraction of incidental coal under our proposal could reduce the cost for Title IV reclamation at an AML eligible site.

Example: After the requisite consultation and concurrences with the Title V regulatory authority, the AML agency announces a contract solicitation to receive bids for the reclamation of a refuse pile contributing sediment and acid mine drainage to local streams. Prior to the solicitation, the AML agency estimates the total cost of reclaiming the refuse pile (removing it to another site and revegetating both sites) at $500,000. This figure would include a $50,000 allowance for administrative expenses such as project design and project monitoring. Based on existing chemical analysis of the refuse pile, including BTU information, estimates place the net market value of the incidental coal in the refuse pile (after transportation, cleaning, royalty costs, etc.) at $400,000. The estimated net cost for the project would then be $100,000 ($500,000–$400,000). Based on these estimates, project bids from contractors would be in the $100,000 range subject to the condition that the extracted incidental coal would become the property of the contractor. Thus reclamation of a project that would ordinarily cost the AML agency $500,000 without contractor sale of incidental coal, or that would cost the agency at least $250,000 under the existing rule requiring at least 50 percent government funding, would cost only about $100,000 under our proposal.

If the contract is awarded, the contractor would be fully responsible for the completion of the work regardless of his return on the sale of incidental coal.

This proposal should result in the reclamation of certain AML sites which commonly contribute acid mine drainage (AMD) or other environmental problems far beyond their realty boundaries and which have little likelihood of otherwise being reclaimed under current Title IV regulations or being mined under Title V of SMCRA. These sites would not likely be reclaimed under the Title IV program because limited AML funds would ordinarily be directed to higher priority reclamation. Nor would these sites likely be mined under the Title V regulatory program due to their marginal coal reserves and/or potential for significant long-term liability for the ever-present AMD or other problems which may exist at the site. Beyond the refuse piles discussed above, other examples of AML sites where reclamation could involve the extraction of incidental coal include previously deep-mined areas needing to be daylighted to remove remaining pillars and highwalls needing a second cut to remove acid-producing coal deposits.

H. Could Private Organizations (e.g., Watershed Groups) Assist in AML Reclamation Efforts?

Yes. AML agencies can form partnerships with industry, private citizens and other government agencies to help address AML problems. Partnerships such as those developed under the Clean Stream's Initiative are an example of how these outside groups can assist in reclaiming lands. Outside funds can also be contributed for specific AML projects as allowed by law.

I. Will This Proposal Result in Environmental Abuses?

We do not believe that this proposal will result in environmental abuses. Under the AML program the percentage of government funding for reclamation of an eligible site does not adversely impact the quality of the reclamation of that site. The AML agency selects individual sites from the Abandoned Mine Land Inventory using its priority system. The AML agency then develops the reclamation parameters for that site and includes them in its reclamation contract. The AML agency, not the AML contractor or the owner of the coal, establishes these parameters. The AML agency oversees the reclamation and ensures adherence to the contract requirements. These requirements would dictate or stipulate that any coal extraction that occurs be incidental to the construction work, *i.e.*, is limited to only that which is necessary to carry out the prescribed reclamation in order to address the identified health, safety or environmental problem.

J. How Would an AML Agency Approve Reclamation Projects Under the Proposed Rule?

Like any other AML project, reclamation projects involving the incidental extraction of coal and reduced government funding levels would have to meet the requirements specified in 30 CFR Subchapter R. AML projects are not selected by the contractor. The AML agency has total control over every project specification from design, to bidding, to final reclamation completion. The selection of reclamation sites by the AML agency is based on the need to protect the public health and safety or environment from the adverse effects of past mining activities. A particular site could be selected only after the AML agency has determined that private industry was unable or unwilling to remine and reclaim the site as a Title V operation, and the State Attorney General or other legal officer has certified that the project meets the eligibility requirements specified in State or Indian Tribe counterparts to Title IV.

OSM is expressly prescribing certain procedures to be followed to prevent potential abuses of the reduced funding level provisions. First, the AML agency, in consultation with the Title V regulatory authority, would determine whether the site would be appropriate for AML reclamation activities based on the likelihood of extracting the coal under a Title V permit. In addition, the Title V regulatory authority and the Title IV AML agency would concur on the boundaries of the AML project and on the extent and amount of the coal to be incidentally extracted during the reclamation project. This delineation of coal would include only that portion of the total coal at the site that must be extracted in order to remediate the particular hazard or environmental problem caused by past mining.

Through this proposal we hope to target long-standing AML problem sites. The proposal is not designed to address

sites involving redisturbance and subsequent reclamation of abandoned mine lands, such as highwalls and outslopes that have become environmentally stable over the years and pose no other problems.

K. What Would be the Consequence of AML Contractors Removing Coal Outside the Limits Authorized by the AML Project?

AML contractors removing coal outside those contract parameters could be subject to immediate termination of their AML contracts, forfeiture of any performance and reclamation bonds, and all other remedies provided by law for breach of contract.

III. Discussion of Proposed Rule

A. What Would Be the Change in definition of Government-Financed Construction at Section 707.5?

OSM is proposing to amend the definition of *government-financed construction* in § 707.5 of the permanent program regulations by allowing for a lower percentage of financing from OSM or other AML reclamation agencies for government construction sites under Title IV reclamation which involve the incidental extraction of coal. A government agency includes a State or Indian Tribe with an approved Title IV program under the definition of agency found at 30 CFR 870.5. For those States and Indian Tribes that do not have approved Title IV programs, a government agency means OSM or its designated State agent.

Reclamation projects are funded from several sources. Some of these sources include private individuals who donate time and money, environmental groups, utilities, industry and government funding under the AML program. Under the current definition of *government-financed construction*, the government's financial share of the AML reclamation must be at least 50 percent of the total project cost. This percentage restriction limits the ability of AML agencies to undertake certain reclamation projects because there may be insufficient AML funds to accomplish all necessary reclamation in a State or on Tribal land and funds must be prioritized for maximum impact. By reducing the government share required for AML projects, OSM and the States and Indian Tribes would maximize existing AML funds and work cooperatively and in partnership with industry, citizens, and the environmental community to bring about reclamation that otherwise might never be accomplished. In addition to reducing the required government share for AML projects, we have rewritten the definition of government-financed construction in the ''Plain English'' style in order to improve its clarity. The ''Plain English'' rewriting is not intended to effect any substantive changes to the existing definition.

B. What is the Change in Information Collection for Section 707.10?

OSM proposes to revise section 707.10 which contains the information collection requirements for Part 707. The proposed revision changes the justification for the current exemption from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The revised basis for this exemption is that the information required to be maintained in section 707.12 consists only of information that would be provided by persons in the normal course of their business activities.

C. What are the Information Collection Requirements for Section 874.10?

OSM also proposes to add a § 874.10 which contains the information collection requirements for Part 874 and the Office of Management and Budget (OMB) clearance number. The proposed addition includes the estimated reporting burden per project for complying with the new information collection requirements contained in this proposed rulemaking.

D. What is the Purpose Behind Proposed Section 874.17?

This new section would outline the procedures an AML agency would need to follow in approving AML projects receiving less than 50 percent government funding because of planned coal extraction incidental to the reclamation.

E. How Would the Consultation in Section 874.17(a) Work?

The consultation process under proposed 874.17(a) would require the AML agency to consult with the regulatory authority to determine the likelihood of the coal being mined under a Title V permit. The purpose of this consultation would be to ensure that the AML program and funds are not used for activities that should properly be permitted and regulated under Title V. Through this consultation process OSM intends that AML funds be directed only to eligible sites.

OSM believes the information upon which the ''likelihood of the coal being mined under a Title V permit'' determination is made should be information that is reasonably available. We have listed certain kinds of information that we believe would be available and also helpful in reaching a decision on whether or not to proceed with the project under the AML program. These examples of ''available'' information are not exhaustive. Each site will present a different set of circumstances and problems which are best addressed on a case-by-case basis. We are leaving it to the experience and technical and professional judgment of the Title IV and Title V officials within each jurisdiction to decide if an abandoned mine land site should be mined under a Title V permit or reclaimed under the Title IV AML program. Those decisions will continue to be monitored by OSM through its oversight of the respective programs.

Under this section, the AML agency would also consult with the regulatory authority to determine the likelihood for potential problems and impacts arising between Title IV reclamation projects and adjacent or nearby Title V operations when such Title V operations are present. The purpose of this provision is to identify problems at an early stage and to establish the reclamation responsibility. An example is where there might be a hydrologic connection between nearby or adjacent Title IV and Title V activities. In such cases, OSM believes it is essential to ensure that responsibility for environmental problems, such as acid mine drainage arising from a permitted Title V activity but impacting a Title IV activity, remains with the Title V permittee. Conversely, a Title V permittee would not be responsible for any environmental problems stemming from a Title IV reclamation activity.

F. What Types of Concurrences Between the AML Agency and the Regulatory Authority Would Be Required in § 874.17(b)?

If the AML agency decides to proceed with the reclamation project after consulting with the Title V regulatory authority, then the two must concur in determinations as to: (1) the extent and amount of any coal refuse, coal waste, or other coal deposits, the extraction of which would be covered by the Part 707 exemption or counterpart State and Tribal laws and regulations, and (2) the delineation of the boundaries of the AML project. These determinations are intended to ensure that only the amount of coal needed to accomplish the reclamation is covered by the Part 707 exemption. This coal would be exempt from the reclamation fee payment.

G. Under § 874.17(c) How Would the AML Agency Document the Results of the Consultation and the Concurrences With the Title V Regulatory Authority?

The AML agency would document in the AML case file the determinations as to the likelihood of coal at the site being mined under a Title V permit and the likelihood of interactions between AML activities and nearby or adjacent Title V activities that might create new environmental problems or adversely affect existing situations. Furthermore, the AML agency would document the information used for making these determinations and the names of the responsible agency officials.

H. What Special Requirements Would Apply for Qualifying § 874.17(d) Reclamation Projects?

Proposed paragraph 874.17(d)(2) would expressly require that qualifying AML reclamation projects comply with provisions for State and Tribal reclamation plans and grants found at 30 CFR Subchapter R. The required compliance with Subchapter R is intended to ensure that the incidental coal extraction projects authorized under this rulemaking would be accomplished in accordance with the substantial safeguards of the AML program. These safeguards include such things as: public participation and involvement; environmental evaluation to achieve compliance with the National Environmental Policy Act of 1969; and use of appropriate State or Tribal procurement procedures and regulations as authorized under the grant common rule at 43 CFR 12.76.

Further, to provide increased protections to the AML fund and to citizens or landowners who might be affected by the project, we are including three additional requirements to qualifying § 874.17(d) reclamation projects. Paragraph (d)(1) would require the AML agency to characterize the site in terms of existing hydrologic and other environmental problems. Paragraph (d)(3) would require the AML agency to develop site-specific reclamation and contractual provisions such as performance bonds to ensure that the reclamation is completed. Paragraph (d)(4) would require the contractor to provide documents that authorize the extraction of the coal and payment of royalties to the mineral owner or other applicable party. The purpose of these requirements is to ensure that before a contract is awarded, there is a valid coal lease authorizing the contractor to extract the coal. The lease would identify the party responsible for paying the royalty, the amount of the royalty, and the party receiving the royalty.

I. What Must the Contractor Do if He or She Extracts More Coal Than Is Specified in § 874.17(b)?

Section 874.17(e) would require the contractor to obtain a permit under Title V for the extraction of any coal not included in the paragraph (b)(1) Part 707 exemption. Such coal extraction would not be incidental to the AML reclamation project and thus would be subject to all the Title V requirements. The reclamation contract between the AML agency and the contractor therefore should clearly set forth the extent and amount of coal covered by that exemption, as concurred in by the Title V regulatory authority under paragraph 874.17(b)(1).

IV. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. It would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government funding, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation. Participation under the rule change is strictly voluntary and those participating are expected to do so because of the economic benefit.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose any new requirements on the coal mining industry or consumers, and State and Indian AML program administration is funded at 100 percent by the Federal government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. The administration of the AML program by a State or Indian Tribe is funded at 100 percent by the Federal Government and the decision by a State or Indian Tribe to participate is voluntary. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government funding, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation.

6. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

7. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSM has submitted the information collection and record keeping requirements of 30 CFR Part 874 to the Office of Management and Budget (OMB) for review and approval.

Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. This proposal would add a new section at 30 CFR 874.17 titled ''AML Agency Procedures for Reclamation Projects Receiving Less than 50 percent government funding.'' This section would require consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project. This section would also require compliance with 30 CFR Subchapter R and related provisions to insure that adequate environmental safeguards are considered and followed during AML reclamation project.

Need for and Use: OSM, State and Tribal regulatory authorities use the information collected under 30 CFR Part 874 to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards.

Respondents: The 26 State regulatory authorities and Indian Tribes who will be reviewing and consulting on between 20 and 80 plus reclamation projects involving the incidental removal of coal that OSM and State regulatory authorities are expected to initiate each year.

Total Annual Burden: For each project OSM estimates that two persons will need a total average of 16 hours to review information during the consultation phase of section 874.17 (a)(1) and (2); that two persons will need a total average of 4 hours to make the determinations required during the concurrence phase of section 874.17(b)(1) and (2); that one person will need an average of 1 hour for the file documentation requirement of section 874.17(c) and that one person will need an average of 6 hours to determine the special environmental and site reclamation requirements. The total burden for each project is estimated to be 27 hours. The estimated total annual burden for 30 CFR 874.17 ranges from a low of 540 hours to a maximum of more than 2,160 hours, averaging 1,500 hours annually. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of OSM and State regulatory authorities, including whether the information will have practical utility;

(b) The accuracy of OSM's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents. Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and record keeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. The control number will appear in section 874.10. To obtain a copy of OSM's information collection clearance request, explanatory information, and related form, contact John A. Trelease at (202) 208–2783 or by e-mail at jtreleas@osmre.gov.

By law, OMB must submit comments to OSM within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and record keeping requirements by July 27, 1998, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

9. National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. section 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be made for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). The EA will be completed and a finding made on the significance of any resulting impacts before we publish the final rule.

10. 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, § 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.). (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? 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 Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

11. Authors

D.J. Growitz and Danny Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

List of Subjects

30 CFR Part 707

Highways and roads, Incidental mining, Reporting and recordkeeping

requirements, Surface mining, Underground mining.

30 CFR Part 874

Reclamation, Surface mining, Underground mining.

Dated: June 19, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR Parts 707 and 874 as set forth below:

PART 707—EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

1. The authority citation for Part 707 continues to read as follows:

Authority: Secs. 102, 201, 501, and 528 of Pub. L. 95–87, 91 Stat. 448, 449, 467, and 514 (30 U.S.C. 1202, 1211, 1251, 1278).

2. In § 707.5, the definition of *Government-financed construction* is revised to read as follows:

§ 707.5 Definitions.

* * * * *

Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

3. Section 707.10 is revised to read as follows:

§ 707.10 Information collection.

Since the information collection requirement contained in 30 CFR 707.12 consists only of expenditures on information collection activities that would be incurred by persons in the normal course of their activities, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C.3501 *et seq.*) and does not require clearance by OMB.

PART 874—GENERAL RECLAMATION REQUIREMENTS

4. The authority citation for Part 874 continues to read as follows:

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

5. Section 874.10 is added to read as follows:

§ 874.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029–XXXX. This information is needed to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit.

(b) OSM estimates that the public reporting burden for this part will average 27 hours per project, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Please refer to OMB Control Number 1029–XXXX in any correspondence.

6. Section 874.17 is added to read as follows:

§ 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

This section tells you, the AML agency, what to do when considering an abandoned mine land reclamation project as government-financed construction under part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) *Consultation with the Title V Regulatory Authority.* In consultation with the Title V regulatory authority, you must make the following determinations:

(1) You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) You must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) *Concurrence with the Title V Regulatory Authority.* If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the extent and amount of any coal refuse, coal waste, or other coal deposits which can be extracted under the part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) *Documentation.* You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) *Limitation.* If the reclamation contractor extracts more coal than specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA.

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