

## Major Provisions of P.L. 109-432

### SMCRA Amendments Act of 2006

*(H.R. 6111 was approved by Congress on December 9, 2006, and signed into law as P.L. 109-432 December 20, 2006.)*

#### **Reclamation fees**

- Extends fee collection at statutory rates through FY 2021.
- Eliminates OSM's authority and responsibility to set rates administratively after expiration of statutory fee rates.
- Statutory fee rates:

#### Through September 30, 2007:

*Surface:* 35  
*Underground:* 15  
*Lignite:* 10

#### FY 2008-2012: (10% reduction)

*Surface:* 31.5  
*Underground:* 13.5  
*Lignite:* 9

#### FY 2013-2021: (20% cumulative reduction)

*Surface:* 28  
*Underground:* 12  
*Lignite:* 8

*Section 402(a) of SMCRA.*

#### **Allocation formula for AML fund revenues**

Section 402(g) of SMCRA as it existed before P.L. 109-432 assigned 50% of all fees collected from operations within the jurisdiction of a state or tribe to an account reserved for that state or tribe. The remaining 50% of fees collected, plus 100% of all other AML fund revenue (less interest transferred to the UMWA Combined Benefit Fund) was allocated as follows:

- 20% to the Rural Abandoned Mine Program (RAMP) administered by USDA.
- 40% for grants to uncertified states and tribes based on historical coal production in the state or on tribal lands before August 3, 1977.

- 40% to the Secretary's discretionary share for administrative expenses, federal reclamation programs, SOAP, etc.

The SMCRA Amendments Act of 2006 revised that formula as follows:

- State/Tribal share. Beginning with fees collected during FY 2008, certified states and Indian tribes will no longer be entitled to receive state-share or tribal-share allocations (50% of fees collected within their jurisdiction). *Section 401(f)(3)(B) of SMCRA*.

Amounts that would have been allocated to certified states and tribes under section 402(g)(1) of SMCRA will be transferred to the historical production allocation on an annual basis to the extent that those states and tribes receive in-lieu payments from the Treasury (through the Secretary of the Interior) under sections 402(i) and 411(h)(2) of SMCRA. *Section 411(h)(4) of SMCRA*.

- Rural Abandoned Mine Program (RAMP) share. Eliminates the RAMP allocation of AML fund revenues as of December 20, 2006. *Sections 401(c) and 402(g)(2) of SMCRA*.
- Historical production share. Increases the historical production allocation by the amount of the former RAMP allocation. *Section 402(g)(5) of SMCRA*.
- Secretary's discretionary share. Amount remains unchanged, but new language specifies that minimum-program grant make-up funds must come from this allocation. *Section 402(g)(3)(E) and (8) of SMCRA*.

*Sections 401(f)(3)(B), 402(g) and (i) and 411(h) of SMCRA.*

### **Distribution of annual fee collections**

Once fully phased in, approximately 83% of annual fee collections will be distributed to states and tribes outside the appropriations process.

Beginning with FY 2008 and ending in FY 2022, requires annual distribution (mandatory spending not subject to appropriation) to states and tribes of an amount equal to—

- (1) the amount of AML fund revenues for the preceding fiscal year (excluding interest and donations) that were assigned to all state-share, tribal-share, or historical production allocations, plus
- (2) the amount needed for minimum-program make-up grants under section 402(g)(8) for the current year.

After FY 2022, mandatory distributions will continue at the same level as in FY 2022 as long as funds are available for distribution from the AML fund. *Section 401(d)(3), (f)(1), and (f)(2) of SMCRA.*

The law provides for a 4-year buildup to the full distribution level. Distributions will be 50% of the amount otherwise required in FY 2008 and 2009 and 75% of the amount otherwise required in FY 2010 and 2011. The portion of fee collections not distributed in those years will remain in the AML fund for distribution after FY 2022. *Section 401(f)(5) of SMCRA.*

Certified states and tribes will receive distributions under section 401(f) only in FY 2008 because the bill adds a new section 401(f)(3)(B), which provides that certified states and tribes are ineligible to receive their state-share or tribal-share allocations with respect to fees collected after FY 2007. However, FY 2008 distributions consist of FY 2007 fee collections, so certified states and tribes are eligible to receive 50% of their state or tribal share allocation of fees collected for that year.

Beginning with FY 2009, certified states and tribes will receive annual payments from the Treasury in lieu of the amount of fee collections during the previous year that would otherwise have been allocated to their state or tribal share accounts in the AML fund in the absence of new section 401(f)(3)(B) of SMCRA. *Section 411(h)(2) of SMCRA.*

For the first 3 years, payments from the Treasury to certified states and tribes under section 411(h)(2) of SMCRA will be reduced to 25%, 50%, and 75%, respectively of the amount that the states and tribes would otherwise receive under this provision. Those states and tribes will receive the difference in two separate annual payments beginning with FY 2018. *Section 411(h)(3)(B) and (C) of SMCRA.*

The mandatory annual distribution to uncertified states and tribes includes an amount equal to the amount of fee revenues for the prior year that are reassigned to the historical production allocation from what would have been the state-share or tribal-share allocation for that year for certified states and tribes in the absence of new section 401(f)(3)(B) of SMCRA. It is limited to the amount actually reallocated, which equals the amount of Treasury payments under paragraphs (h)(2) and (3) of section 411 of SMCRA. It does not include amounts reallocated to the historical production allocation as a result of Treasury payments to both certified and uncertified states and tribes during the prior year in lieu of grants from the existing unappropriated balance of state and tribal share accounts within the AML fund under section 411(h)(1) of SMCRA. *Sections 401(f)(3) and 411(h)(4) of SMCRA.*

In short, beginning with the distribution made in FY 2009, the mandatory annual distribution to uncertified states and tribes will include the following components:

- State/tribal share allocation for uncertified states and tribes for the preceding fiscal year.

- Historical production allocation for those states and tribes for the preceding fiscal year.
- The amount reallocated to the historical production allocation from what would have been the State/tribal share allocation for certified states and tribes for the preceding fiscal year.
- The amount needed from the Secretary's discretionary share to implement the minimum program grant guarantee under section 402(g)(8) of SMCRA.

Distributions will be in addition to any amounts appropriated by Congress. *Section 401(f)(5) of SMCRA.*

Expenditures for federal AML projects in non-program states, the federal emergency reclamation program, OSM administrative expenses, the small operator assistance program (SOAP), the Clean Streams program, and watershed cooperative agreements remain subject to appropriation. *Section 401(d) of SMCRA.*

### **Disposition of unappropriated balance of state-share and tribal-share allocations**

The new law requires payment to all states and tribes of an amount equal to the unappropriated balance of all state-share and tribal-share allocations made before October 1, 2007. Payments must be made in seven equal annual installments, beginning with FY 2008. *Section 411(h)(1) of SMCRA.*

Funds for these payments plus transfers to the three UMWA retiree benefit plans will come from unappropriated funds in the Treasury, not the AML fund. *Section 402(i)(2) of SMCRA.*

The Secretary of the Treasury must transfer these funds to the Secretary of the Interior for distribution to states and Indian tribes. *Section 402(i)(2) of SMCRA.*

The amount transferred by the Treasury for this purpose is subject to a \$490 million annual cap on all Treasury payments to states, tribes, and the three UMWA retiree benefit plans under this law. If demands on the Treasury for these purposes exceed that amount, payments must be made on a proportionate basis, using a uniform percentage. The Secretary of the Interior is responsible for determining the applicable percentage. *Section 402(i)(3) of SMCRA.*

Disbursements must be made without regard to any limitation under section 401(d) of SMCRA and concurrently with payments to states under that section. This provision is left over from a prior version of the bill that would have required payment from Mineral Leasing Act revenues. It has little or no relevance in the context of the current law. *Section 411(h)(3)(A) of SMCRA.*

Certified states and tribes must spend these funds in accordance with legislative or tribal council direction, with priority given to addressing the impacts of mineral development. Note: This provision does not apply to distributions of in-lieu payments under section 411(h)(2). *Section 411(h)(1)(D)(i) of SMCRA.*

Uncertified States and tribes must use their payments for the purposes of section 403. Because these payments are taken from the Treasury rather than from the AML fund, it appears that new paragraphs (g)(2) and (7) of section 402 of SMCRA, which require strict adherence to the priorities in section 403 for grants from state-share, tribal-share, and historical production allocations, do not apply to these distributions. *Section 411(h)(1)(D)(ii) of SMCRA.*

Each year, an amount in the AML fund equal to in-lieu payments from the Treasury (through the Secretary of the Interior) to states and tribes under this provision must be transferred from the state-share and tribal-share allocations to the historical production allocation. *Section 411(h)(1)(A)(ii) and (h)(4) of SMCRA.*

### **Disposition of unappropriated balance of RAMP allocation**

H.R. 2361, the FY 2006 Interior Appropriations Act, transferred this balance, as it existed on September 30, 2005, to the Secretary's discretionary share.

P.L. 109-432 makes that portion of the unappropriated RAMP balance allocated before the date of enactment of the bill (December 20, 2006) available for transfer to the three UMWA retiree benefit plans if AML fund interest earnings are insufficient to meet their eligible needs. *Section 402(h)(4)(B) of SMCRA.*

### **Minimum program threshold and funding**

Before the enactment of P.L. 109-432, section 402(g)(8) of SMCRA established a minimum annual \$2 million allocation for each state and Indian tribe with an approved AML reclamation plan, eligible lands and waters, and priority 1 or 2 sites, although Congress appropriated only \$1.5 million annually for grants for this purpose.

The new law requires that at least \$3 million in total grant funding be provided each year to every state and Indian tribe with an approved AML reclamation plan, eligible lands and waters, and priority 1 or 2 sites. *Section 402(g)(8)(A) of SMCRA.*

The new law also specifies that the minimum grant funding guarantee and other provisions of section 402(g)(8)(A) apply to Tennessee and Missouri "notwithstanding any other provision of law". We interpret this provision as meaning that Tennessee and Missouri are eligible for minimum program grant funding regardless of whether they have an approved regulatory program, provided they have an approved AML reclamation plan, eligible lands and waters, and priority 1 or 2 sites in need of reclamation. *Section 402(g)(8)(B) of SMCRA.*

Make-up funds for the minimum program grant guarantee (the amount in excess of what those states and tribes would receive in the absence of this guarantee) must be taken from the Secretary's discretionary share. *Section 402(g)(3)(E) and (8) of SMCRA.*

The minimum program grant funding guarantee will be phased in over four years. States and tribes will receive grants at 50% of that level (\$1.5 million) for the first two years and at 75 % of that level (\$2.25 million) for the next two years. *Section 401(f)(5) of SMCRA.*

### **Recapture and reallocation of unexpended grant funds**

The new law extends the time after which the Secretary may rescind unexpended state-share or tribal share grant awards from 3 years to 5 years for grants awarded during FY 2008, 2009, and 2010. After that time, the Secretary has the authority to reallocate those funds to the historical production allocation.

### **Use of AML grant funds for water supply restoration in uncertified states and tribes**

The new law removes the 30% cap on the amount of state-share and historical production grant funds awarded to noncertified states and tribes that may be used for protecting, repairing, replacing, constructing, or enhancing facilities to replace water supplies adversely affected by coal mining practices. If desired, all grant funds awarded from state-share and historical production allocations may be used for this purpose. *Section 403(b)(1)(D) of SMCRA.*

### **Set-aside for acid mine drainage treatment and abatement**

Prior to the enactment of P.L. 109-432, states could set aside up to 10% of their state-share and historical production grant funds in an interest-bearing trust fund for the comprehensive abatement and treatment of acid mine drainage (AMD) in qualified hydrologic units in accordance with plans approved by the Secretary.

The new law increases the amount that may be set aside to 30% of state-share and historical production grant funds. It also eliminates (1) content requirements for treatment plans, (2) requirement for Secretarial approval of those plans, and (3) requirement for consultation with the Natural Resources Conservation Service. *Section 402(g)(6) of SMCRA.*

### **Set-aside for future reclamation**

Under section 402(g)(6)(A) of SMCRA before the enactment of P.L. 109-432, states could set aside up to 10% of state-share and historical production grant funds in an interest-bearing trust fund for future AML reclamation projects, although none of those funds could be expended before Sept. 30, 1995.

The new law repealed the authorization for this set-aside.

## **AML reclamation project priorities**

Before the enactment of P.L. 109-432, section 403(a) of SMCRA required that expenditures of money from the AML fund “reflect the following priorities in the order stated”:

- P1: Protection of public health, safety, general welfare, and property from extreme danger.
- P2: Protection of public health, safety, general welfare, and property.
- P3: Restoration of land and water resources and the environment.
- P4: Protection, repair, replacement, construction, or enhancement of public facilities adversely affected by coal mining practices.
- P5: Development of publicly owned land adversely affected by coal mining practices.

The new law—

- Eliminates P4 and P5. *Section 403(a) of SMCRA.*
- Eliminates general welfare as a component of P1 and P2. *Section 403(a) of SMCRA.*
- Reclassifies P3 lands and waters adjacent to past, present, and future P1 and P2 project sites as P1 or P2. *Section 403(a)(1) and (2) of SMCRA.*
- Requires that, in making grants from the state-share, tribal-share, and historical production allocations, the Secretary ensure strict compliance with the section 403(a) priorities until the state or tribe is certified. *Section 402(g)(2) of SMCRA.*
- Provides that states and tribes may initiate P3 reclamation projects before completing all P1 and P2 projects only if the P3 reclamation is performed in conjunction with a P1 or P2 project. *Section 402(g)(7) of SMCRA.*

## **Allowable uses of Secretary’s discretionary share**

Prior to P.L. 109-432, section 402(g)(3) of SMCRA identified the following as allowable uses of the Secretary’s discretionary share:

- Small operator assistance program.
- Emergency reclamation program.
- Federal reclamation programs.

- Administrative expenses.

The new law added a fifth use: Providing make-up funds for minimum program grants to states and tribes. *Section 402(g)(3) of SMCRA.*

### **Lien waivers**

Before P.L. 109-432, section 408(a) of SMCRA prohibited filing a lien against the beneficiary of an AML reclamation project if the person owned the surface before May 2, 1977, and neither consented to, participated in, nor exercised control over the mining operations that necessitated the reclamation.

The new law eliminated the requirement that the person have owned the surface before May 2, 1977, to qualify for the automatic lien waiver. *Section 408(a) of SMCRA.*

### **AML inventory**

The new law provides that state and tribal amendments to the AML inventory are now subject to OSM approval. *Section 403(c) of SMCRA.*

### **Certification**

The new law authorizes the Secretary to certify completion of coal reclamation without prior request from the state or tribe after publishing notice in the Federal Register and providing opportunity for public comment. *Section 411(a) of SMCRA.*

### **Transfers to UMWA retiree health benefit plans**

The new law requires annual transfer of all estimated AML fund interest earnings for each fiscal year to the three UMWA retiree benefit plans (the Combined Benefit Fund (CBF), the 1992 Plan, and the 1993 Plan), to the extent payments from premiums and other sources do not meet those plans' expenditure needs, subject to certain limitations. *Section 402(h) of SMCRA.*

It makes the unappropriated balance of the RAMP allocation as of the date of enactment (December 20, 2006) available for transfer to the UMWA plans. We do not interpret this language as superseding the FY 2006 Interior appropriations act, which transferred the unappropriated RAMP balance as it existed on September 30, 2005, to the Secretary's discretionary share. *Section 402(h)(4)(B) of SMCRA.*

Additional transfers to the CBF (for amounts exceeding the now-repealed \$70 million cap on annual transfers of interest from the AML fund and to cover the net deficit in CBF assets as of October 1, 2006) will begin in FY 2007, while transfers to the 1992 and 1993 plans will begin in FY 2008. Transfers to the 1992 and 1993 plans will be phased in, with transfers in FY 2008-2010 limited to 25%, 50%, and 75%, respectively, of the



amounts that would otherwise be transferred. *Section 402(h)(1), (2), and (5)(C) of SMCRA.*

The three UMWA plans are also entitled to payments from unappropriated amounts in the Treasury, subject to the overall \$490 million cap on all annual transfers from the Treasury under this legislation; i.e., all transfers to states and tribes in lieu of state-share and tribal-share allocations and all transfers to the three UMWA plans. *Section 402(i)(1) of SMCRA.*

The new law sets aside all interest earned by the AML fund before enactment (December 20, 2006) and not previously transferred to the CBF (the “stranded interest”) in a reserve fund that would be used to make payments to the three UMWA plans in the event that their needs exceed the \$490 million annual cap on all transfers from the Treasury under this legislation. The reserve may not be used to pay the CBF premium refunds to operators authorized under section 402(i)(1)(C) of SMCRA. *Section 402(h)(4)(A) of SMCRA.*

The new law requires that the Secretary of the Interior consult with the trustees of the three UMWA plans at reasonable intervals and notify Congress if the reserve fund appears insufficient to cover any shortfall in transfers from the Treasury because of the cap. *Section 402(h)(4)(C) of SMCRA.*

In general, the three UMWA plans must exhaust all available revenue sources, generally in the following order, to meet their expenditure needs:

- Premiums paid by operators and other UMWA revenues (although the law phases out premiums for unassigned beneficiaries).
- Payments from other federal agencies for benefit purposes, e.g., for the Medicare prescription drug program.
- Estimated interest to be earned by the AML fund during the fiscal year in question.
- Unappropriated balance of the RAMP allocation.
- Transfers from unappropriated funds in the U.S. Treasury, subject to the \$490 million cap on annual transfers to both the UMWA plans and states and tribes.
- Reserve fund created from existing stranded interest earned by the AML fund.

## **Remining incentives**

Under section 510(e) of SMCRA as it existed before P.L. 109-432, the reduced revegetation responsibility period (2 years in the East and 5 years in the West) for remining operations and the exemption from the section 510(c) permit-block sanction for unanticipated events resulting from remining operations expired September 30, 2004.

The new law reinstates those incentives and makes them permanent by removing the expiration date. *Section 510(e) of SMCRA.*

It also authorizes the Secretary to adopt other remining incentives (e.g., reclamation fee rebates or waivers and the use of AML funds to provide financial assurance in lieu of performance bonds for remining operations) by regulation, but it requires that, in each instance in which an incentive is to be used, the Secretary determine, with the concurrence of the State regulatory authority, that the eligible land would not be likely to be remined and reclaimed without the incentive.

It also limits fee rebates and waivers to operations that remove or reprocess abandoned coal mine waste or that conduct remining activities on P1 or P2 sites. The amount of the rebate or waiver may not exceed the estimated cost of reclaiming the site under Title IV.

*Section 415 of SMCRA.*

## **Tribal primacy**

The new law establishes conditions under which Indian tribes may assume primary authority for the regulation, in whole or in part, of surface coal mining and reclamation operations on reservation lands under the jurisdiction of the tribe. It also requires a study, 18 months after each tribe obtains primacy, of the advisability of extending the authority for primacy to other Indian lands. *Section 710(j) of SMCRA.*