

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Parts 732, 785, 870 and 872****[Docket ID: OSM-2007-0016]****RIN 1029-AC57****Remining Incentives****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are proposing to amend our existing regulations to provide incentives to promote the remining and reclamation of eligible abandoned coal mine refuse piles. We are also considering and seeking comment on other remining incentives that were authorized by recent amendments to the Surface Mining Control and Reclamation Act of 1977 made by the Tax Relief and Health Care Act of 2006 (2006 Act).

DATES: Comments on the proposed rule must be received on or before on June 30, 2008, to ensure our consideration.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 4 p.m., Eastern Time, on May 22, 2008. If you wish to attend a hearing, but not speak, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held. If you wish to attend and speak at a hearing, you should follow the procedures under "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

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

- *Federal e-Rulemaking Portal:* www.regulations.gov. The notice is listed under the agency name "Office of Surface Mining Reclamation and Enforcement." The proposed rule has been assigned Docket ID: OSM-2007-0016.

If you would like to submit comments through the Federal e-Rulemaking Portal, go to www.regulations.gov and do the following. Click on the "Advanced Docket Search" button on the right side of the screen. Type in the Docket ID OSM-2007-0016 and click the "Submit" button at the bottom of the page. The next screen will display the Docket Search Results for the

rulemaking. If you click on OSM-2007-0016, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- *Mail, Hand-Delivery/Courier to:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Please include the Docket ID (OSM-2007-0016) with your comment.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

For additional information on the rulemaking process and the public availability of comments, see "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

If you wish to comment on the information collection aspects of this proposed rule, submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via electronic mail, to OIRA_DOCKET@omb.eop.gov or via fax at (202) 395-6566. Please refer to OMB control number 1029-0040 in your correspondence.

FOR FURTHER INFORMATION CONTACT: James M. Taitt, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Pittsburgh, PA 15220. Telephone: 412-937-2106.

SUPPLEMENTARY INFORMATION:

- I. Background
 - A. Remining
 - B. The 2006 Act
 - C. Outreach Summary
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background**A. Remining**

Remining is defined in 30 CFR 701.5 as "surface coal mining and reclamation operations which affect previously mined areas." Many previously mined areas, generally those mined prior to the passage of SMCRA, were not adequately reclaimed during the original mining operation. These sites often include environmental and safety problems resulting from inadequate reclamation, such as landslides, instability, erosion and sedimentation of streams, inadequate vegetation, and water quality problems. In many cases, previously mined lands may still include coal

reserves that can be economically mined using present technology. Often, operators can economically remine and reclaim these areas while at the same time eliminating the environmental and safety problems associated with the site.

Recognizing that remining can eliminate environmental and safety problems at previously mined sites while recovering coal reserves, Congress, in 1992, revised SMCRA to encourage remining. In the Energy Policy Act of 1992 (EPAct) (Pub. L. 102-486), Congress amended section 404 of SMCRA (30 U.S.C. 1234) to extend eligibility for reclamation of lands and water under that section to lands which are reaffected by remining operations. In the May 31, 1994, **Federal Register** (59 FR 28136) we published a final rule implementing changes to SMCRA made by the EPAct. We promulgated 30 CFR 874.12(h) which provides in relevant part that "[s]urface coal mining operations on lands eligible for remining pursuant to section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by § 800.40 of this chapter."

We made further changes in our rules regarding remining in response to revisions to SMCRA made by the EPAct. In the November 27, 1995, **Federal Register** (60 FR 58479) we published amendments to our rules at 30 CFR 701.5, 773.15(b)(4)(i), 785.25, and 816/817.116(c)(2) that were designed to encourage remining of lands eligible for expenditures under sections 402(g)(4) and 404 of SMCRA.

In the February 12, 1999, **Federal Register** (64 FR 7470) we published a rule concerning the financing of abandoned mine land reclamation (AML) projects that involve the incidental extraction of coal. The rule (known as the enhancing AML reclamation rule) amends the definition of "government-financed construction" at 30 CFR 707.5.

We have also published a proposed rule that provides environmental performance and reclamation standards for remining abandoned coal refuse remining operations. That proposed rule was published in the **Federal Register** on January 17, 2007 (72 FR 2136). A provision of the January 17th proposed rule proposes a definition of the term "abandoned coal refuse remining operations" at 30 CFR 701.5. That proposed definition states:

Abandoned coal refuse remining operations means those surface mining activities for the on-site reprocessing of abandoned coal refuse and for the removal of abandoned coal refuse on lands that would

otherwise be eligible for expenditure under section 404 and section 402(g)(4) of the Act. Reprocessing operations include on-site activities that separate the coal from waste material using specific gravity or floatation methods, as well as activities that use mechanical means to sort and size the refuse material prior to separation. Removal operations include on-site activities that remove refuse from the site as well as those activities that use mechanical means to sort and size the refuse material prior to its removal. The term "abandoned coal refuse remining operations" does not encompass the removal of refuse for non-fuel uses.

A final rule regarding this definition has not yet been promulgated, but the term has been used throughout this preamble and in our proposed rule language. Therefore, for purposes of the rulemaking, we will review any comments on the definition submitted in response to the January 17th proposed rule and we will accept any additional comments with regard to the definition that are submitted concerning this proposed rule.

B. The 2006 Act

Remining Incentives

On December 20, 2006, Congress enacted the 2006 Act, which included amendments to SMCRA. These amendments, among other things, added section 415, titled "Remining Incentives" to SMCRA. Section 415 gives the Secretary of the Interior the option to promulgate rules, subject to certain requirements, to provide incentives to promote remining of eligible lands. Section 415(a) provides that rules promulgated under this section must:

* * * describe conditions under which amounts in the fund may be used to provide incentives to promote remining of eligible land under section 404 in a manner that leverages the use of amounts from the fund to achieve more reclamation with respect to the eligible land than would be achieved without the incentives.

The fund referred to in that provision is defined in SMCRA section 701(7) as "the Abandoned Mine Reclamation Fund established pursuant to section 401." In this proposed rule we refer to the Abandoned Mine Reclamation Fund as "the Fund."

Section 415(b) provides that "Any regulations promulgated under subsection (a) shall specify that the incentives shall apply only if the Secretary determines, with the concurrence of the State regulatory authority referred to in title V, that, without the incentives, the eligible land would not be likely to be remined and reclaimed."

In essence, section 415 establishes that the Secretary has discretion to

promulgate rules authorizing remining incentives that use amounts from the Fund, so long as the incentives meet certain requirements. Section 415(c) specifies two types of incentives that the Secretary may consider.

(1) IN GENERAL.—Incentives that may be considered for inclusion in the regulations promulgated under subsection (a) include, but are not limited to—

(A) A rebate or waiver of the reclamation fees required under section 402(a); and

(B) The use of amounts in the fund to provide financial assurance for remining operations in lieu of all or a portion of the performance bonds required under section 509.

Section 415(c)(1)(A) specifies that the Secretary may consider a rebate or waiver of the reclamation fees that operators must pay for coal produced. Reclamation fees are authorized by SMCRA section 402 (30 U.S.C. 1232) which is implemented in large part at 30 CFR part 870. These fees are collected from coal companies and deposited into the Fund account in the United States Treasury. The Fund is then allocated according to SMCRA. Section 415 authorizes the Secretary to consider whether rebate or waiver of these reclamation fees as an incentive for remining operations would achieve more reclamation of eligible lands than would otherwise be achieved. Only moneys from the Fund can be used for incentives authorized under section 415. As a result, States cannot use prior balance money they receive under SMCRA section 411(h)(1) to pay for remining incentives because the prior balance money is appropriated from the general Treasury and not the Fund.

Section 415(c)(1)(B) specifies the second incentive that the Secretary may consider: "The use of amounts in the fund to provide financial assurance for remining operations in lieu of all or a portion of the performance bonds required under section 509." The performance bonds required by section 509 must be posted by permittees wishing to conduct coal mining and reclamation operations including remining operations. Section 509(a) provides that, "[t]he amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture * * * ." A permittee may have difficulty obtaining a bond for remining previously mined sites because of the environmental and safety problems often associated with these sites. Therefore, Congress authorized the Secretary to offer as a remining incentive, the use of amounts in the

Fund in lieu of all or a portion of the performance bond.

Limitations on Remining Incentives

As discussed above, general requirements for remining incentives are set out in sections 415(a) and (b). Section 415 sets no additional limitations on the use of amounts in the Fund as financial assurance in lieu of performance bonds for remining operations. However, under section 415(c), only two types of remining operations could be eligible for a rebate or waiver of reclamation fees: Those that remove or reprocess abandoned coal mine waste; and remining activities that meet the priorities specified in paragraph (1) or (2) of section 403(a).

Section 415(c)(2) establishes limitations on the use of a rebate or waiver of reclamation fees. Subsection 415(c)(2)(A) provides that:

A rebate or waiver under paragraph (1)(A) shall be used only for operations that—

(i) Remove or reprocess abandoned coal mine waste; or

(ii) Conduct remining activities that meet the priorities specified in paragraph (1) or (2) of section 403(a).

Under subsection 415(c)(2)(B), "[t]he amount of a rebate or waiver provided as an incentive under paragraph (1)(A) to remine or reclaim eligible land shall not exceed the estimated cost of reclaiming the eligible land under this section."

Remining Operations

Under subsection 415(c)(2)(A)(i), the Secretary may authorize a rebate or waiver of reclamation fees for operations that remove or reprocess abandoned coal mine waste. Abandoned coal mine waste (referred to in this rulemaking as abandoned coal refuse) is the refuse resulting from the cleaning of mined coal. Abandoned coal refuse sites are lands on which refuse was placed prior to the passage of SMCRA and that were not adequately reclaimed when mining was completed. The refuse material was often dumped or piled on lands without sufficient environmental protection controls or without ensuring stability of the piles. These piles can cause numerous environmental problems including acid drainage and pollution of adjacent streams, uncontrolled erosion resulting in stream siltation and downstream flooding, and diminished aesthetic qualities. Additionally, the coal refuse piles present serious health and safety risks including landslides, uncontrolled burning of the refuse material, and injuries to site visitors because of pile instability.

In many cases, the technology for separating coal from refuse material when these sites were created left a significant amount of coal in the piles. Operators may remine refuse material to recover coal by either reprocessing it (separating the coal from refuse material) in place or by hauling the refuse material to an offsite location for processing or burning. Reining and subsequent reclamation of refuse piles can eliminate safety and environmental problems while recovering coal reserves.

Under subsection 415(c)(2)(A)(ii), the Secretary may authorize a waiver or rebate of reclamation fees for reining activities that meet the priorities specified in paragraph (1) or (2) of SMCRA section 403(a) (known as priority 1 or priority 2 sites). Section 403(a) was also amended by the SMCRA Amendments of 2006. As amended, subsection 403(a)(1) is subdivided into subparagraphs (1)(A) and (1)(B). Similarly, amended subsection 403(a)(2) is subdivided into subparagraphs (2)(A) and (2)(B). The priority referred to in subparagraph (1)(A) is protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices; and the priority referred to in subparagraph (1)(B) is restoration of land and water resources and the environment that have been degraded by the adverse effects of coal mining practices; and are adjacent to a site that has been or will be remediated under subparagraph (1)(A). The priority referred to in subparagraph (2)(A) is protection of public health and safety from adverse effects of coal mining practices; and the priority referred to in subparagraph (2)(B) is restoration of land and water resources and the environment that have been degraded by the adverse effects of coal mining practices, and are adjacent to a site that has been or will be remediated under subparagraph (2)(A). OSM refers to the priorities in subparagraphs (1)(A) and (B) collectively as "priority 1," and to the priorities in subparagraphs (2)(A) and (B) collectively as "priority 2."

Priority 1 and priority 2 sites can include, among other things, abandoned surface mine areas and abandoned deep mine entries and voids, as well as abandoned coal refuse sites. As with coal refuse sites, reining of priority 1 and priority 2 sites can eliminate many safety and environmental hazards while recovering coal reserves.

The 2006 Act made numerous other changes to SMCRA. This rule proposes regulations to implement only new SMCRA section 415. Other amendments of SMCRA in the 2006 Act will be addressed in separate rulemakings.

C. Outreach Summary

Because Congress gave the Secretary the option to promulgate rules to use the Fund to implement section 415, we decided to ask stakeholders whether rules to encourage reining were necessary and, if so, what those rules should encompass. On February 23 and February 26, 2007, we conducted an outreach program to solicit comments, concerns and ideas for regulatory changes to implement section 415. We provided, via e-mail, a series of discussion points for stakeholders to consider when thinking of possible regulatory changes. We asked the stakeholders whether incentives were necessary to encourage reining operations and if so, what form the incentives should take. We also were concerned about any impacts incentives for reining operations may have on the amount of money in the Fund that would be used to reclaim abandoned mine land projects.

We sent the outreach discussion points to representatives of industry, the States, environmental, citizen and conservation organizations and groups. Information we received from the outreach was considered in the drafting of this proposed rule.

We received a limited response to our outreach effort. For the most part, organizations that responded supported efforts to encourage the reining of abandoned coal mines and indicated that reining incentives could complement existing programs to encourage reining.

In addition to the general comments supporting the concept of additional reining incentives, we also received some specific suggestions about incentives. One outreach respondent indicated that we should make a determination in the regulations that the incentives proposed will encourage reining that would not likely otherwise occur. The respondent believes that an individual finding by the Secretary for each reining permit would delay permit issuance and that the State regulatory authority should make the determination that reining permits are justified on a case by case basis. We have proposed a regulation at 30 CFR 732.18(c) that would implement this suggestion. We would interpret the requirement for the Secretary's determination in section 415(b) as a requirement applicable to changes in State AML or regulatory programs that implement these incentives. We do not propose to interpret section 415(b) as requiring a Secretarial determination for every proposed reining operation to which these incentives could apply.

However, we recognize that delegating this responsibility to the State regulatory authority may not be feasible or wanted by States. In the alternative, a potential process could be developed where the OSM Field Office Directors would be responsible for making the determination that reining and reclamation would not likely occur, save for the reining incentives, on a case-by-case basis. Operators seeking incentives would propose the projects to the State regulatory authority who, in turn, would notify the OSM Field Office Director with oversight authority in their State. The Field Office Director would examine the permit application and would forward his or her determination of eligibility for reining incentives to the State regulatory authority. We are seeking comments on whether such a system would be practical and advantageous; and on whether some other method of making the finding required in section 415(b) could be more practical or more helpful.

An outreach respondent indicated that waiver of reclamation fees was preferred over rebate of the fees. This respondent indicated that a rebate of fees would inject an element of uncertainty into the reining process when the purpose of the incentives should be to eliminate or reduce uncertainty. We have proposed rules at 30 CFR 785.26 and 30 CFR 870.13(d) to provide for waivers of reclamation fees for abandoned coal refuse reining operations that remove all refuse material for reprocessing off site. However, we are seeking comments on whether rebates of reclamation fees for abandoned coal refuse reining operations would be more practical than waivers and would increase the number of reining operations and their subsequent reclamation.

Another respondent to our outreach efforts supported the use of the Fund to provide financial assurance in lieu of some or all of the performance bonds. The respondent suggested that we establish a bond pool for reining operations. Since each State's bonding process is unique, we decided not to propose a national rule requiring a specific bonding system for reining operations such as a bond pool.

One respondent proposed that we create a bond pool for reining projects in the anthracite and bituminous regions of Pennsylvania. A State-specific bonding program would be beyond the scope of a national rulemaking. We chose not to propose a rule to use monies from the Fund to provide financial assurances in lieu of all or part of required performance bonds. A nationwide rule that adds to,

or modifies, existing bonding regulations would not fit well with the diversity of bonding systems employed in the States. Additionally, one State indicated that it employed one agency to administer Title IV projects and a separate agency to administer Title V projects. That State was concerned that its laws may not allow the use of Title IV funds to provide bonds to guarantee reclamation of Title V projects or may not allow transfer of funds from its Title IV agency to its Title V agency.

One respondent suggested that we develop a reining operator's assistance program to provide financial assistance to operators for preparing permit materials for reining sites. We are seeking comment from the public on the feasibility and utility of such a program.

One respondent also indicated support of the concept of a special nationwide permit for reining, but disagrees with the way it was limited by the Army Corps of Engineers (COE). The respondent indicated that we should not follow the COE practice of defining a reining site by a ratio of 60% reining acreage to 40% new disturbance. The respondent believes this ratio will serve to limit the number of reining sites addressed and that operators need maximum incentives to ensure that as much reining will be done as promptly as possible. We are seeking further comment from the public on whether we should address the COE definition of reining in our final rule.

A respondent requested that we revise 30 CFR 785.25 to remove paragraph (c) that allows 30 CFR 785.25 to expire. The removal of the September 30, 2004, expiration date will be addressed in a separate rulemaking.

Several States expressed concerns about whether they would be required to amend their approved mining or abandoned mine land programs to include counterparts to any Federal rules promulgated under section 415. We anticipate that State adoption of any rules we promulgate under section 415 of SMCRA will be discretionary. However, to participate in the reining incentives program, States will have to adopt rules that are no less effective than the Federal rules that may be eventually promulgated.

II. Description of the Proposed Amendment

After considering the comments we received in outreach, we determined that, while there was a general interest in reining incentives, there was little agreement on what specific incentives should be offered. When envisioning rules to implement section 415, we determined that any incentives offered

should be easily implemented and result in the most rapid and complete reclamation possible. We felt that permittees would not likely take advantage of incentives that add excessive recordkeeping burdens or result in cumbersome procedures. As a result, we determined that a waiver of reclamation fees would be the most logical incentive to implement. A waiver would require little or no additional recordkeeping by operators and would result in benefits to operators as soon as coal is recovered from reining operations. Since reclamation fees are based on the amount of coal produced, a waiver of fees would give operators more revenue per ton and would encourage operators to mine quickly and efficiently. Mining more rapidly will lead to more rapid reclamation and efficient mining will increase the amount of coal reserves recovered from reining operations.

In deciding what types of reining operations we should encourage through the use of incentives, we felt that it would be logical to remine and subsequently reclaim previously affected sites that have serious environmental impacts and that have sufficient coal reserves to make a waiver of reclamation fees an attractive incentive. Coal refuse disposal sites appeared to be the most logical candidates that fit these criteria.

The safety impacts of refuse disposal sites can be severe. Refuse piles placed on hillsides, such as exist throughout Appalachia, may be unstable and slip, resulting in landslides with damage to adjacent property and roads. In addition, refuse is often easily combustible because of its significant coal content. As a result, burning refuse banks have been serious problems, because of both noxious fume emissions and the potential for fires spreading to adjacent areas and to nearby residences. Refuse piles are also attractive for off-road vehicle use which, because of the piles' unstable and steep slopes, can result in injury and even death.

Refuse disposal sites can also have severe environmental impacts, including: Acid drainage and pollution of adjacent streams resulting from the large amounts of pyritic materials that are often present; uncontrolled erosion resulting in stream siltation and downstream flooding; diminished aesthetic qualities, and loss of land use.

While the amount of coal in each refuse disposal site is variable, there can be significant amounts remaining to be reined. Reining can recover the reserves while at the same time reclaiming the site to eliminate the safety and environmental impacts.

We also considered whether to offer incentives for all refuse reining operations including both those that reprocess refuse on site and those that remove all on-site refuse material for reprocessing off site. There are several differences between abandoned coal refuse removal operations and on-site reprocessing operations that make reprocessing the refuse material off site preferable to on-site reprocessing. Most significantly, refuse removal operations generate little, if any, residual waste and no wet refuse waste, as compared to that generated by on-site reprocessing operations. Further, refuse removal operations do not require on-site reprocessing or preparation plants with their associated process water circuits, discharges, and ponds. Additionally, most refuse removal operations will be of shorter duration than on-site refuse reprocessing operations.

Having considered the above factors, we are proposing, in this rule, to authorize waiver of reclamation fees for the reining of refuse disposal sites where all refuse is removed for reprocessing off site. We are proposing to add four provisions to our regulations at 30 CFR to implement this reining incentive: 30 CFR 732.18, 785.26, 870.13(d), and 872.23.

Proposed 30 CFR 732.18 would provide that a State regulatory authority may submit a revision to its approved regulatory program to provide reining incentives under certain circumstances. This provision would also establish that approval by the Secretary of such a revision would be deemed a determination that without the incentives, the lands to be reined would not be likely to be reined and reclaimed. Proposed 30 CFR 785.26 would establish procedures for a State regulatory authority to waive reclamation fees as incentives for reining. Proposed section 870.13(d) would authorize the waiver of reclamation fees for abandoned coal refuse reining operations that remove all abandoned coal refuse to an off-site location for reprocessing or direct use. Finally, proposed 30 CFR 872.23 would establish procedures for the States to amend their programs to include reining incentives in their Title IV and Title V programs. We will discuss each of the four proposed new regulations in turn below.

30 CFR 732.18

We proposed 30 CFR 732.18 to satisfy the requirement of SMCRA section 415(b) that the Secretary determine, with the concurrence of the State regulatory authority, that, without the incentives, the eligible land would not

be likely to be remined and reclaimed. Proposed 30 CFR 732.18 provides:

(a) This section applies to any State implementing 30 CFR 785.26 and 870.13 providing for a waiver of reclamation fees as an incentive for remining.

(b) The State regulatory authority may submit a revision to its approved regulatory program to provide remining incentives by waiver of reclamation fees pursuant to 30 CFR 785.26 and 870.13, if the State determines that providing such incentives will result in remining and reclamation of eligible lands that would not otherwise be likely to be remined and reclaimed.

(c) Approval by the Secretary of the Interior of a revision to a State regulatory program under this section will constitute a determination that without the incentives pursuant to this section, the lands to be remined would not be likely to be remined and reclaimed.

Under this proposed provision, if a State first determines that a regulatory program provision providing remining incentives would result in remining and reclamation that would not otherwise be likely, then approval by the Secretary of the revision would constitute the Secretary's determination to the same effect. This provision would avoid the necessity for the Secretary to concur in every waiver decision on a remining permit. We believe that delegating to the State the authority for waiver decisions is consistent with the cooperative federalism that is central to the SMCRA regulatory scheme. When the State submits an amendment to adopt these remining incentives they will have to include provisions to ensure that the lands to be remined would not likely be mined and reclaimed without these provisions. Our approval of the amendment would ensure that the requirements for the finding are included in the State's program and would establish that once implemented by the State, OSM would conduct oversight on these remining operations to ensure that the finding was being made. We are also considering an alternative to this language: To delegate to OSM Field Office Directors the authority for making this finding on a case-by-case basis for each remining operation. We invite comment on this alternative.

30 CFR 785.26

Proposed 30 CFR 785.26 is intended to implement SMCRA sections 415(a) and (b). This section would establish procedures for a State regulatory authority to waive reclamation fees as an incentive for remining. It would require a State regulatory authority to consult with the State agency that administers the State reclamation program under Title IV and the

implementing regulations at part 870, before making the determinations required under proposed 30 CFR 785.26(a) and (b). Proposed 30 CFR 785.26 provides:

This section applies to waiver of reclamation fees by a State regulatory authority as an incentive for remining operations under part 872 of this chapter. A waiver of reclamation fees under this section shall apply only to production of coal by removal of abandoned coal mine refuse for reprocessing or direct use off site.

(a) *Consultation with the Title IV reclamation agency.* You, the State regulatory authority, may waive reclamation fees otherwise required under part 870 of this chapter, provided that you first consult with the State agency designated to administer the State reclamation program under part 870 of this chapter, and make the following determinations:

(1) That waiver of reclamation fees for remining of eligible lands under the permit would result in more reclamation of the eligible land than would result from expenditure of the same amount from the Fund.

(2) That the eligible lands to be remined under the permit would not be likely to be remined and reclaimed without the waiver of reclamation fees as an incentive.

(b) *Eligibility.* After you make the determinations under paragraph (a) of this section, production of coal by remining pursuant to a permit you issue under part 786 of this chapter will be eligible for a waiver of reclamation fees in accordance with part 872 of this chapter.

(c) *Documentation.* You must include in the remining case file for the permit:

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

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

This proposed rule would require that, after consultation, the State regulatory authority would determine whether remining under a permit for which a waiver of fees was requested would achieve more reclamation than would be achieved without the incentives. The required consultation and determinations are intended to assure that waivers could be authorized only for remining that would leverage use of moneys from the Fund to achieve more reclamation of eligible lands than would otherwise occur. If after making the determinations required under this section, the State regulatory authority issued a permit for remining a coal refuse pile to remove all abandoned coal refuse, the State regulatory authority could waive the reclamation fees that would normally be due on coal produced under that remining permit.

In general, the proposed rule would authorize waiver of reclamation fees for coal recovered from abandoned coal refuse remining operations that remove all refuse for reprocessing or burning off

site if all criteria in section 415 of SMCRA are met. A State that amends its approved program to authorize fee waivers would be required to document, as part of the permit application process, that a remining operation is eligible for a waiver of the reclamation fees and that it meets the provisions of section 415. The State would have to retain that documentation for the waiver as part of the permitting package subject to review by OSM pursuant to our oversight and audit procedures. Permittees receiving permits for abandoned coal refuse remining operations would be required to file the OSM-1 form as provided for in the Federal regulations at 30 CFR Part 870. If this rule becomes final as proposed, the OSM-1 would be modified to address waiver of the reclamation fees for tonnage reported for coal recovered by these remining operations. The permittee's eligibility for a waiver would be subject to periodic audit and review under existing procedures in 30 CFR 870.16. If an audit confirms that a permittee has improperly received a fee waiver, or an operator fails to complete reclamation of an abandoned coal refuse remining operation, the fee waiver would be cancelled and the fee imposed for all coal produced.

The effect of this proposal on States would be to authorize uncertified States (*i.e.* States other than those States that have certified achievement under SMCRA section 411 of all section 403(a) priorities), in their discretion, to adopt State program amendments providing for fee waivers consistent with the proposed rule. If a State did amend its program to authorize fee waivers, the State would forego its share of the fees waived. If a State waived reclamation fees, the value of the waived fees would usually be offset to the extent abandoned coal refuse sites were reclaimed. The limit on the amount of fees waived for a particular remining operation should be less than the State's cost to reclaim the site using abandoned mine land funds. Therefore, the State abandoned mine land program would not have to expend Federal AML funds to reclaim the priority problem, and would realize a savings at least equivalent to the value of the fees waived. Additionally, a State could actually achieve more reclamation through remining incentives at less cost because it would not have to prepare designs and plans for reclamation of the coal refuse sites. Instead, operators would be responsible for preparing these documents as part of a permit application package to remining the site. Typically, the cost of preparing designs

and plans for reclaiming a coal refuse disposal area could amount to 10% of the overall cost of a project. States could save these costs by having an operator remine the site and include the designs and plans in a permit application package.

Waiver of reclamation fees could affect the amount of money available from the Fund for distributions to the States and for OSM's use. Waiving fees results in less money being sent to the Fund and, in turn, would mean less money available for distribution from the Fund. Therefore, a State with numerous remining sites qualifying for a waiver could conceivably reduce the amount of money available from the Fund for use by other States and OSM. While the amount of fee waivers is expected to be minor and the consequent impact to the Fund to also be minor, we are seeking comment on whether the proposed remining incentives would impact the ability of the States to effectively reclaim priority 1 and priority 2 sites.

Effects on industry would be positive. Any companies granted a fee waiver would remine and reclaim abandoned coal refuse sites. If the remining and reclamation would not be profitable, even with a fee waiver, then the operators would not conduct the operation. There is a possibility that, in some markets, an operator selling coal from remined coal refuse might compete with conventionally-mined coal, but OSM does not anticipate that a typical refuse remining operation would clean and sell a large amount of refuse coal.

The rule as proposed could have a minor effect on transfers to the United Mine Workers of America (UMWA) as authorized under SMCRA section 402(h). To the extent reclamation fees are waived or rebated, a minor reduction in the principal of the Fund could result in a minor reduction in earnings.

We are proposing to authorize waiver of reclamation fees because we believe that it would be simpler to administer an incentives program that offers a waiver, rather than a rebate. A rebate program would involve additional steps because it would first require an operator to pay reclamation fees and would require OSM to process the fees before they are rebated by the State from AML funds distributed to the State under SMCRA section 401(f) and allocated pursuant to SMCRA section 402(g). This would result in delayed payments to operators and would not achieve more rapid or complete reclamation.

Additionally, we are proposing that the waiver of fees apply only to

operations that remove all coal refuse from the site for reprocessing or direct use off site. An operation that would remove only a portion of the refuse material from the site would not be eligible for a waiver. As discussed below, we believe that removal of all refuse material would be the most beneficial way to ensure complete reclamation of the site.

We believe that our proposal could be fairly and easily implemented by States who elect to do so, and would result in environmental improvements because the incentive would encourage operators to remine and reclaim abandoned coal mine refuse piles.

However, as we noted earlier, we are also seeking comments on the feasibility and practicality of offering reclamation fee rebates as provided in SMCRA section 415(c)(1)(A). Under a rebate program, operators would pay reclamation fees on coal recovered from abandoned coal refuse remining operations. An operator could then seek rebates of fees if the State elected to include fee rebate provisions in their approved program. The rebates would be paid by the State from moneys distributed from the Fund. In all cases, OSM would retain audit authority to ensure that the requirements of SMCRA section 415 were met.

30 CFR 870.13(d)

We propose to add a new paragraph (d) to existing 30 CFR 870.13 to provide that a State may waive fees for "abandoned coal refuse remining operations" under our specified conditions.

Proposed 30 CFR 870.13(d) provides:

(d) *Waiver of fees for abandoned coal refuse remining operations.* The operator will not be required to pay fees for coal produced by an abandoned coal refuse remining operation as defined in § 701.5 of this chapter that removes all abandoned coal refuse and that meets the requirements of § 872.23 of this chapter, if the fees have been waived pursuant to §§ 732.18 and 785.26 of this chapter.

Because existing 30 CFR 870.13 sets out the reclamation fee rates for various types of operations, we believe it would be logical to add this proposed provision on waiver of fee rates to it.

This proposed rule would change OSM's current practice regarding the assessment of reclamation fees on coal refuse material. Generally, OSM does not assess fees if the refuse is demonstrated to have no value for fee purposes. SMCRA imposes the fees at a flat rate per ton, but also states that the fee shall not exceed 10 percent of the value of the coal at the mine, as determined by the Secretary. SMCRA

section 402(a), 30 U.S.C. 1232(a). In implementing this statutory restriction, OSM may find that refuse has no value in the following circumstances: when the operator clearly documents that the material was a by-product of a coal preparation process, is of low quality, has no relevant use other than as a waste material in a small power production or cogeneration facility qualified by the Federal Energy Regulatory Commission, and is not reprocessed using gravity separation to extract the useable coal. OSM also considers any other relevant factors in determining whether fees must be paid under section 402(a). By contrast, the fee waiver under this proposed rule would apply regardless of the material's quality and use, and the type of reprocessing.

30 CFR 872.23

Proposed 30 CFR 872.23 describes the process and requirements for State waiver of reclamation fees. As proposed, this section provides:

(a) The State regulatory authority may waive reclamation fees required under part 870 of this chapter for abandoned coal refuse remining operations permitted under subchapter G that remove all abandoned coal refuse for reprocessing or direct use off site.

(b) The amount of the waiver provided as an incentive under paragraph (a) of this section to remine and reclaim eligible land must not exceed the estimated cost as required in 30 CFR 780.18(b)(2) of reclaiming the eligible land.

Consistent with SMCRA section 415, this proposed rule specifies the circumstances in which a waiver may be given, and also requires that the amount of the waiver must not exceed the estimated cost of reclaiming the eligible land. Under proposed 30 CFR 872.23, if an operator obtains a permit under Title V of SMCRA to remine abandoned coal refuse by removing the refuse for reprocessing or direct use from the site, and the State regulatory authority makes the findings required under proposed 30 CFR 785.26, then the operation would be eligible for waiver of reclamation fees on coal removed thereafter.

Additional Provisions OSM Is Considering

As discussed below, we request comments on whether we should implement any other alternatives for incentives that are authorized in section 415, in addition to the incentives addressed in the proposed rule text. Under section 415 two types of remining operations could be eligible for a rebate or waiver of reclamation fees: Those that remove or reprocess abandoned coal mine waste; and

remining of priority 1 and priority 2 sites. This proposed rule addresses waiver of reclamation fees for operations that remine abandoned coal mine refuse and remove the refuse for direct use or reprocessing off site. We are not proposing a rebate or waiver of reclamation fees for operations that reprocess coal mine refuse on site without removal of the refuse from the site. An operation that reprocesses coal mine waste on-site would be required to reclaim any refuse remaining after recoverable coal is removed. This is required because failure to properly reclaim the refuse material could lead to serious environmental problems such as erosion, siltation of streams, and water quality issues, as well as safety concerns because of the potential instability of the disturbed refuse. Because of these potential problems from refuse left on a site, we believe a remining incentive that requires removal of the abandoned coal mine refuse is preferable. Removal should encourage rapid removal of the refuse and thus rapid alleviation of associated environmental and safety problems. However, we are considering providing for fee waivers or rebates for operations that reprocess abandoned coal mine refuse on site and we seek comments on whether such operations should also be eligible for waivers or rebates of reclamation fees. Commenters may wish to focus on the environmental benefits, if any, of reprocessing the refuse on site as opposed to removal of the refuse; whether incentives would encourage more refuse remining operations if they were applied to coal produced from refuse processed on site; and the relative costs and benefits of reclaiming the material remaining after separating coal from the refuse on site versus reclaiming the site after complete removal of all refuse.

This proposed rule would not authorize waiver of reclamation fees for remining of priority 1 or 2 sites, *per se*. It would apply only to abandoned coal refuse sites; however some abandoned coal refuse sites may also qualify as priority 1 or 2 sites. Nonetheless, we are considering making priority 1 or 2 sites eligible for a waiver of reclamation fees. We seek comments on whether making these sites eligible for incentives would be likely to increase the remining and subsequent reclamation of such sites and whether incentives for these sites would be likely to meet the requirements of SMCRA section 415(a) and (b).

We seek comments on alternative ways to implement the reclamation fee waiver provision. One alternative way to implement the waiver provision would be for the State to adopt a system

that would provide a credit of reclamation fees in the full amount of the estimated cost to the State for reclamation of the priority 1 or 2 site or the coal refuse site. The credit would be applied to the site being remined, and if not fully utilized at that site, the balance of the credit could be applied to future fees otherwise payable for coal produced at other permits. This alternative could address situations in which coal refuse remining would not recover sufficient coal to ensure that a fee waiver would cover the full cost of reclamation. This type of incentive might more effectively encourage the remining of additional priority 1 or 2 sites and coal refuse areas.

We decided not to propose rules regarding the use of amounts in the Fund to provide financial assurance for remining operations in lieu of all or a portion of the performance bonds required under section 509. As we noted above, a nationwide rule that adds to, or modifies, existing bonding regulations would not fit well with the diversity of bonding systems employed in the States.

However, in addition to the proposed rule, we are also considering either addressing all types of incentives specifically authorized by Congress in section 415, or addressing other types of incentives generally authorized but not specified by Congress. Therefore, we seek comments and information on whether any additional remining incentives would be practical and would be likely to materially increase reclamation by remining operations. However, any additional incentives would be subject to the restrictions in section 415 on the use of remining incentives.

Finally, we request comments on the likely usefulness and effectiveness of remining incentives authorized in section 415 of SMCRA. If we determine that the record demonstrates insufficient interest in, or effectiveness of, remining as authorized in section 415 we may choose not to adopt a rule authorizing incentives.

How Will This Rule Affect Approved Regulatory Programs?

The proposed rule would authorize States to adopt similar provisions if they choose to, but we would not require the States to amend their programs.

III. Public Comment Procedures

Electronic or Written Comments: If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate

any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications or information on what factors are most significant when determining the viability and profitability of refuse remining.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above (see **ADDRESSES**) will not be included in the docket for this rulemaking.

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

Public Hearings: We will hold a public hearing on the proposed regulations 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 James Taitt (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 4 p.m., Eastern Time, on May 22, 2008. Any disabled individual who requires reasonable accommodation to attend a public hearing should also contact Mr. Taitt so that appropriate arrangements can be made.

If no one has contacted Mr. Taitt to express an interest in participating in a hearing by that date, a hearing will not be held. If only a few people express an interest, a public meeting rather than a hearing may be held. At the public meeting, we will note any concerns that are expressed and a summary will be entered into the docket for the rulemaking.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present

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

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by Executive Order 12866 and the results are given below.

(1) The provisions in the rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(2) The provisions in the rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(3) The provisions in the rule do not raise novel legal or policy issues.

(4) This rule would not have an effect of \$100 million or more on the economy. The costs associated with this proposed rule would be in the form of waivers of reclamation fees that would normally be made part of the Fund. These costs are estimated at approximately \$1.5 million; significantly less than \$100 million. The costs are estimated from available data that indicate that refuse piles may have a carbon content ranging from a low of 27.5 percent to a high of 98.9 percent of the original coal values that were mined. Recovery of these formerly “lost” coal values, either by reprocessing or by directly burning the refuse, in a sense increases the nation’s coal resources. Since the percentage of recoverable coal varies widely, we are assuming, for computation purposes, that the coal refuse, on average, contains from 5,000 to 8,000 Btu/lb, or about half the Btu value of bituminous coal. Approximately 9 million tons of refuse is recovered/utilized annually. Because this material has about half the Btu value of bituminous coal, these 9 million tons of refuse would represent, theoretically, at least 4.5 million tons of coal. Assuming that 4.5 million tons of coal are recovered from the reaming of refuse piles each year, then \$1,417,500 in reclamation fees would be waived in each year through fiscal year 2012, and \$1,260,000 would be waived each year from fiscal years 2013 through 2021. The reduced waiver amount for fiscal years 2013 through 2021 results from

the fact that the fee rate for those years has been set at a lower rate by law.

The rule might result in an increase in reaming operations from the current levels; however, the increase is not expected to be significant and, therefore, would not add greatly to the waiver estimates provided above.

The rule would 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. The rule would have the positive effects on the economy and the environment of increasing the number of coal refuse reaming sites that are reclaimed, and of recovering coal within those sites that was unavailable for use because it was deposited as waste. While waiver of reclamation fees will reduce the amount of money in the Fund, we do not expect the reduction to significantly affect the ability of States to reclaim priority 1 or priority 2 sites.

Regulatory Flexibility Act

The Department of the Interior certifies that the proposed rules would 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.*). The proposed rules would not have an adverse economic impact on the coal industry or State regulatory authorities. Further, they would not produce 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.

The fee waiver contained in the proposed rule would presumably result in an economic benefit for the coal operator. Based on available data, we estimate that approximately \$1,417,500 in reclamation fees would be waived in each year through fiscal year 2012 and \$1,260,000 would be waived each year from fiscal years 2013 through 2021.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, the regulations are not considered “major” under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule:

a. Would not have an annual effect on the economy of \$100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would 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.

Unfunded Mandates

The rule would not impose an unfunded mandate on State, Tribal, or local governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule would not have takings implications that would require a takings implication analysis.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the rule would not have Federalism implications sufficient to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of the rule on Federally-recognized Indian tribes and have determined that the rule would not have substantial direct effects on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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

These regulations are not considered a significant energy action under Executive Order 13211. The proposed revisions would not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSM has submitted the following

request for information collection and recordkeeping authority for 30 CFR 785 to the Office of Management and Budget (OMB) for review and approval:

Title: 30 CFR 785—Requirements for permits for special categories of mining.
OMB Control Number: 1029–0040.

Summary: The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of Public Law 95–87, which requires applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents:

Applicants for coal mine permits and State Regulatory Authorities.

Total Annual Responses: 387.

Total Annual Burden Hours: 24,521.

Total Non-Wage Costs: 0.

Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and recordkeeping 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 appears in 30 CFR 785.10. To obtain a copy of OSM's information collection clearance request contact John A. Trelease at (202) 208–2783 or by e-mail at jtrelease@osmre.gov.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for SMCRA regulatory authorities to implement their responsibilities, 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.

By law, OMB must respond 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 recordkeeping requirements by June 2, 2008 to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to

OIRA_DOCKET@omb.eop.gov, or via facsimile to (202) 395–6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202 SIB, Washington, DC 20240, or electronically to jtrelease@osmre.gov. Please include the OMB control number, 1029–0040, at the top of your correspondence.

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. 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 draft EA is on file in the docket for this rulemaking and may be viewed online at <http://www.regulations.gov>. At that internet address, the document is listed under “Office of Surface Mining Reclamation and Enforcement.” The EA will be completed and a finding made on the significance of any resulting impacts before we publish the final rule.

Data Quality Act

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

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 732

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 870

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

30 CFR Part 872

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Surface mining, Underground mining.

Dated: April 2, 2008.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

For the reasons discussed in the preamble, we are proposing to amend 30 CFR Parts 732, 785, 870, and 872 as set forth below:

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

1. The authority citation for part 732 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

2. Part 732 is amended by adding § 732.18 to read as follows:

§ 732.18 How does a State get approval to offer remining incentives?

(a) This section applies to any State implementing 30 CFR 785.26 and 870.13 providing for a waiver of reclamation fees as an incentive for remining.

(b) The State regulatory authority may submit a revision to its approved regulatory program to provide remining incentives by waiver of reclamation fees pursuant to 30 CFR 785.26 and 870.13, if the State determines that providing such incentives will result in remining and reclamation of eligible lands that would not otherwise be likely to be remined and reclaimed.

(c) Approval by the Secretary of the Interior of a revision to a State regulatory program under this section will constitute a determination that without the incentives pursuant to this section, the lands to be remined would not be likely to be remined and reclaimed.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

3. The authority citation for part 785 is revised to read as follows:

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

4. Part 785 is amended by adding § 785.26 to read as follows:

§ 785.26 What are the procedures for a waiver of the reclamation fee for remining?

This section applies to waiver of reclamation fees by a State regulatory authority as an incentive for remining operations under part 872 of this chapter. A waiver of reclamation fees under this section shall apply only to production of coal by removal of abandoned coal mine refuse for reprocessing or direct use off site.

(a) *Consultation with the Title IV reclamation agency.* You, the State regulatory authority, may waive reclamation fees otherwise required under part 870 of this chapter, provided that you first consult with the State agency designated to administer the State reclamation program under part 870 of this chapter, and make the following determinations:

(1) That waiver of reclamation fees for remining of eligible lands under the permit would result in more reclamation of the eligible land than would result from expenditure of the same amount from the Fund.

(2) That the eligible lands to be remined under the permit would not be likely to be remined and reclaimed without the waiver of reclamation fees as an incentive.

(b) *Eligibility.* After you make the determinations under paragraph (a) of this section, production of coal by remining pursuant to a permit you issue under part 786 of this chapter will be eligible for a waiver of reclamation fees in accordance with part 872 of this chapter.

(c) *Documentation.* You must include in the remining case file for the permit:

- (1) The determinations made under paragraph (a) of this section; and
- (2) The information taken into account in making the determinations.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

5. The authority citation for part 870 continues to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105-277.

6. Section 870.13 is amended by adding paragraph (d) to read as follows:

§ 870.13 Fee rates.

* * * * *

(d) *Waiver of fees for abandoned coal refuse remining operations.* The operator will not be required to pay fees

for coal produced by an abandoned coal refuse remining operation as defined in § 701.5 of this chapter that removes all abandoned coal refuse and that meets the requirements of § 872.23 of this chapter, if the fees have been waived pursuant to §§ 732.18 and 785.26 of this chapter.

PART 872—ABANDONED MINE RECLAMATION FUNDS

7. The authority citation for part 872 is revised to read as follows:

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

8. Part 872 is amended by adding § 872.23 to read as follows:

§ 872.23 Incentives for abandoned coal refuse remining operations.

(a) The State regulatory authority may waive reclamation fees required under part 870 of this chapter for abandoned coal refuse remining operations permitted under subchapter G that remove all abandoned coal refuse for reprocessing or direct use off site.

(b) The amount of the waiver provided as an incentive under paragraph (a) of this section to remin and reclaim eligible land must not exceed the estimated cost as required in 30 CFR 780.18(b)(2) of reclaiming the eligible land.

[FR Doc. E8-9564 Filed 4-30-08; 8:45 am]

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