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PITTSBURGH FIELD DIVISION  
NEWSLETTER  
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**OSM RULE WILL YIELD MORE RECLAMATION  
FOR ABANDONED MINE LAND DOLLARS**

OSM has published a final rule to enhance the Abandoned Mine Land (AML) Program by encouraging reclamation at sites that otherwise might not be reclaimed.

The rule, published November 20 in the *Federal Register*, clarifies an earlier requirement for the government to finance at least 50 percent of any AML reclamation project involving the incidental removal of coal in order for operators to receive specified statutory SMCRA exemptions.

"This change will enable OSM and the States and Indian tribes with AML programs to partner with industry and leverage AML dollars to achieve more reclamation at a lower cost," said Jeff Jarrett, Director of OSM. "We can now allow private companies to underwrite most of the cost of reclamation at many AML sites that would otherwise have little likelihood for being reclaimed."

"Abandoned mine reclamation can be financed through the sale of remaining coal at the site," said Jarrett. "This will greatly reduce the government's or tribe's share of the cost, and the ultimate cost to the AML program. The savings can then be used to reclaim other sites."

The rule is expected to result in better, more cost effective reclamation by:

*Facilitating reclamation of hazards, which may not otherwise be reclaimed because of limited AML funds.* Because of the safeguards in the AML program, this reclamation can be accomplished without the shadow of further damage to the environment.

*Facilitating the removal of coal from sites already impacted by mining.* Making it easier to remove coal

from previously-mined areas contributes to America's energy supply without causing further damage to the environment and without using up virgin coal reserves. Since mining operators are required to reclaim mined lands as they go, re-mining also accomplishes reclamation of the original abandoned mining disturbance.

OSM undertook the rule-making in response to the decision by the U.S. Court of Appeals, District of Columbia Circuit, approving the February 12, 1999, Enhancing AML Reclamation Rule while remanding for further explanation the types of government expenses that will qualify as government financing under the rule.

The rule provides the requested explanation and represents a clarification and not a substantive change to the Abandoned Mine Land program authorized by the Surface Mining Control and Reclamation Act of 1977.

OSM also took the opportunity to explain what is meant by the prohibition in the rule against "in-kind" payments being counted towards the government financing of a "government-financed" construction.

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**PROPOSED RULE INCREASES FLEXIBILITY AND  
EFFICIENCY OF STATE PROGRAMS**

OSM is proposing rules intended to add flexibility to the processing of State program amendments. This move would allow OSM to better focus resources on areas that could have the greatest affect on people's lives, safety, and health.

By providing OSM with more discretion in resolving matters affecting approved State programs, the agency will have the ability to respond more appropriately to issues based on the extent and nature of the issue. The public has 60 days from

date of publication (12/3/2003) to comment on the proposed rule change.

The proposed rule would revise OSM's regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977. On occasion, and for various reasons such as legislative changes to the provisions of the Surface Mining Act or litigation, OSM must revise its regulations. As a result, all 24 States with approved programs may be required to amend their approved State programs to be "no less effective" than the OSM regulatory program. Frequently these states already have approved provisions in place covering the matter litigated or changed, requiring only minor adjustments.

Usually, the substance of the required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval does not jeopardize the overall effectiveness of the approved State program. When a State with an approved program fails to amend its program as directed, existing regulations require OSM to begin proceedings to either enforce that part of the State program that should have been amended, or to withdraw approval of the State program in whole or in part and implement a Federal program. This is commonly called a "733 action," named for the section of the code where it is found.

"This rule change would help us avoid one size fits all remedies that can hinder our ability to focus on high priority issues, while continuing to work with the States to resolve any outstanding problems with their approved programs. We currently don't have that discretion," said Jeff Jarrett, Director of OSM. "This improvement, if adopted, would provide us with the discretion to consider the entire performance of the State in effectively implementing its program before determining that proceedings leading to Federal enforcement are warranted. We feel this will be a more productive and efficient, results-oriented approach."

While there may be circumstances in which the substance of a required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval warrants action under OSM's part 733 regulations, in most instances this is not the case. As under the existing regulation, citizens will continue to have the opportunity to petition OSM to initiate a 733 action.

The public has 60 days to comment on the proposed rule change. Interested persons may submit

comments on this proposed rule by one of three methods. Comments may be mailed or hand-carried to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240, or may be sent comments via electronic mail to [OSMRULES@OSMRE.GOV](mailto:OSMRULES@OSMRE.GOV). Comments must be received by February 2, 2004.

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