

## FAQ's for Combined Benefit Fund Fee Rules

1. Why are we publishing rules governing establishment of fees? Aren't fee rates currently fixed by statute?

Answer: The fee rates that Congress enacted as part of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) expire on September 30, 2004. The Act requires that fees for coal produced after that date be established at a rate that will continue to provide for the statutorily mandated transfers to the Combined Benefit Fund. However, the Act does not specify a mechanism for establishing those fees. We considered various options, but ultimately settled on a combination of a rulemaking to establish criteria and procedures for setting the fee together with annual publication of a notice in the Federal Register establishing the fees for that year. We believe that method is the most appropriate one because it will allow the public to comment on the criteria and procedures used to establish fees while providing us the flexibility to calculate and establish the actual rates each year without going through a lengthy rulemaking process that could have the effect of forcing us to use less accurate estimates and data when calculating the fee rates.

2. Does the law require that OSM establish the fee rates?

Answer: Section 402(b) of SMCRA provides that, for coal produced after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h)." While the Act doesn't specify the bureau or agency responsible for establishing the fee, we believe that it is appropriate for us to do so because we are responsible for collecting the fee.

3. What is the Combined Benefit Fund?

Answer: Congress created the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF) in 1992 by merging two financially troubled health care plans, the UMWA 1950 Benefit Plan and Trust and the UMWA 1974 Benefit Plan and Trust, negotiated between the Bituminous Coal Operators Association (BCOA) and the UMWA in 1950. The CBF is financed through premiums levied on companies and individuals signatory to BCOA-UMWA labor agreements.

The CBF is a private employee benefit trust fund that provides health care and death benefits to UMWA coal industry retirees and their dependents and survivors who were both eligible to receive and were receiving benefits from the 1950 Benefit Plan or the 1974 Benefit Plan on July 20, 1992. Most current beneficiaries are widows and dependents of coal miners. The CBF health insurance plan provides "Medigap" coverage; i.e., it pays for health care expenses remaining after Medicare and Medicaid reimbursement and covers prescription drugs.

4. What is the relationship between the Combined Benefit Fund and the Abandoned Mine Reclamation Fund (AML Fund)?

Answer: As part of the Energy Policy Act of 1992, Congress amended SMCRA to require that, at the beginning of each fiscal year in which coal operators pay fees, the Secretary of the Interior transfer an amount equal to the AML Fund's estimated interest earnings for that year to the CBF to help defray the cost of health care benefits for unassigned beneficiaries during that year. (Beneficiaries are classified as unassigned if the company that was originally responsible for paying their health care premiums is no longer in existence and no successor company is legally required to assume that responsibility.) The Act caps this transfer at the lesser of \$70 million or the amount of estimated CBF expenditures for unassigned beneficiaries during that year.

5. Why aren't the new fees designed to meet all CBF needs for unassigned beneficiaries?

Answer: SMCRA neither requires that the fees be sufficient to meet all anticipated CBF needs for unassigned beneficiaries nor authorizes us to establish fees at that level. Section 402(b) of SMCRA specifies that the fees for coal produced after September 30, 2004, "shall be established at a rate to continue to provide for" the transfers to the CBF required under section 402(h). As explained in the preambles to the rules, we believe that section 402(h) of SMCRA essentially limits the transfer for each fiscal year to the estimated amount of interest that the AML Fund will earn during that fiscal year, the estimated CBF needs for unassigned beneficiaries during that year, or \$70 million, whichever is the smallest number. Therefore, our rule provides for establishment of a fee structured to collect that amount each year.

6. Why didn't we seek public comment before establishing the fee rates for FY 2005?

Answer: We delayed initiating a rulemaking to facilitate establishment of fees for FY 2005 because we anticipated that Congress would take action to extend the AML reclamation fee. Although numerous bills were introduced and reviewed by committees in both the House and the Senate, none has been enacted as of the date of this rulemaking. Because the statutory fee rates expire on September 30, 2004, there was no time to seek public input before establishing fees for coal produced after that date. A fee rate must be in effect as of October 1, 2004, both because section 402(b) of the Act requires it and because section 402(h) of SMCRA provides that transfers to the CBF may take place only in years in which operators are required to pay a fee. If we did not establish fee rates for FY 2005 before October 1, 2004, the transfer to the CBF that is scheduled to occur at the beginning of FY 2005 might not take place, which would adversely impact health care benefits for retired miners and their dependents.

7. Why are we publishing both a final rule and a proposed rule?

Answer: As explained above and in the preamble to the final rule, we are making certain rule changes effective immediately because of the need to have a fee in place on October 1, 2004, and to ensure the continued transfer of monies to the Combined Benefit Fund. However, we wish to provide the public with an opportunity to comment on those changes. For that reason, we are publishing a proposed rule that contains rule language identical to that of the final rule. After considering comments on the proposed rule, we may publish a new final rule making changes to any or all of the provisions of the current final rule. In addition, the proposed rule seeks comment on proposed revisions to the rules governing operation of the AML Fund and allocation of fee receipts.

8. What will happen to the abandoned mine land reclamation program under the new fee regime?

Answer: Subject to appropriation by Congress, the AML reclamation program will continue to operate until all available, currently unappropriated monies in the AML Fund are exhausted. However, the Fund will receive no new income other than the interest that the Fund earns each year. Under the rule that we are proposing, the fees assessed for coal produced after September 30, 2004, would be available only for replacement of monies used to make the annual transfer to the CBF.

9. Will the Administration continue to support reauthorization of a fee for AML reclamation?

Answer: Yes. The Administration is committed to pursuing reauthorization of the AML reclamation program to address those abandoned mine-related problems with health and safety impacts.

10. What will happen to the rule if Congress extends the current reclamation fee or reauthorizes a new reclamation fee?

Answer: Any Congressional action to extend the statutory fee rates in section 402(a) of SMCRA would supersede the rates established under this rule for the time that the extension is in effect.

11. Why are benefits for retired UMWA miners and their dependents paid from the AML Fund, which derives its income from fees collected from all coal produced nationwide?

Answer: In adopting the Energy Policy Act of 1992, Congress determined that transferring estimated AML Fund interest earnings to the CBF was an appropriate means of funding health care benefits for retired UMWA miners and their dependents for which no responsible company remains in existence. The rationale for Federal involvement in this situation dates back to a 1946 agreement between then-UMWA

President John L. Lewis and the Federal government that resolved a long-running labor dispute.