

administrative expenses would not qualify as government financing under § 707.5. OSM has never considered the administrative expenses attributed by the government to a particular project to be a form of “in kind” payments. Instead, OSM has always considered “in kind” payments to be contributions to the government by third parties of labor, materials, equipment or services that are used by the government to accomplish required reclamation. As an example of such “in kind” payments to the government, a not-for-profit watershed group might volunteer to plant trees as part of a reclamation project and a local nursery might contribute the trees. Pursuant to OSM’s longstanding interpretation of the “in-kind” payment prohibition of § 707.5, neither the value of the contributed planting services nor trees could ever count towards the government financing of the project.

Finally, for clarity, we are also making non-substantive revisions to the definition of “government-financed construction” at 30 CFR 707.5. We have substituted the words “Government financing” for the word “Funding.” The definition will then read in pertinent part, as follows: “*Government financing* at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act.” (Revision in italics.) The limitation of the provision to government financing is already implicit in the definition but now is made explicit.

III. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

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

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

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

d. This rule does raise legal or policy issues.

These determinations are based on the analysis performed for the Enhancing AML Reclamation Rule (RIN 1029–

AB89) published on February 12, 1999, at 64 FR 7470.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This determination is based on the analysis performed for the Enhancing AML Reclamation Rule (RIN 1029–AB89) published on February 12, 1999, at 64 FR 7470. At that time it was determined that the rule, when implemented, would slightly improve business opportunities for all entities, small and large, by increasing the likelihood that additional reclamation projects would be undertaken each year. Further, the economic impact of the rule on small businesses was determined to be minimal. This determination was based on the facts that:

- the rule would not increase the cost or burden on businesses reclaiming sites eligible under the existing regulations;
- the rule makes it possible for businesses to undertake the reclamation of areas not previously reclaimed under existing regulations;
- the undertaking of the reclamation projects opened up by the rule is entirely voluntary; and
- the only increase in cost due to these new projects will be that for documentation related to the removal and sale of coal as an incidental part of the reclamation project. This incremental cost will be factored into the cost of the project bid submitted to the Title IV governmental authority and should prove to be an insignificant percentage of the total bid. Those who do participate and bid on reclamation projects resulting from the rule will do so to reap an economic benefit in the form of a profit on the sale of coal incidentally mined during the reclamation of the site. The total amount of Federal money that will be available each year for AML projects will neither increase nor decrease as a result of this rule.

3. Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of \$100 million or more. It would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to

accomplish more reclamation. To offset the reduction in government financing, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation. Participation under the rule change is strictly voluntary and those participating are expected to do so because of the economic benefit.

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

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

These determinations are based on the analysis performed for the Enhancing AML Reclamation Rule (RIN 1029–AB89) published on February 12, 1999, at 64 FR 7470.

4. Unfunded Mandates

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

5. Executive Order 12630—Takings

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

6. Executive Order 13132—Federalism

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