

## Comparison of SMCRA and H.R. 6111 (Formerly H.R. 6408) (SMCRA Amendments Act of 2006)

(H.R. 6111 was approved by the 109<sup>th</sup> Congress on December 9, 2006.)

Topic	SMCRA	H.R. 6111
<b>Reclamation fee rates (cents/ton)</b>	<p><u>Through September 30, 2007:</u></p> <p><i>Surface:</i>        35  <i>Underground:</i>    15  <i>Lignite:</i>         10</p> <p><u>After September 30, 2007:</u></p> <p>Secretary to establish fee at a rate sufficient to continue transfers to the UMWA Combined Benefit Fund.</p> <p>[<i>Sec. 402(a), (b)</i>]</p>	<p><u>Through September 30, 2007:</u></p> <p><i>Surface:</i>        35  <i>Underground:</i>    15  <i>Lignite:</i>         10</p> <p><u>FY 2008-2012:</u> (10% reduction)</p> <p><i>Surface:</i>        31.5  <i>Underground:</i>    13.5  <i>Lignite:</i>         9</p> <p><u>FY 2013-2021:</u> (20% cumulative reduction)</p> <p><i>Surface:</i>        28  <i>Underground:</i>    12  <i>Lignite:</i>         8</p> <p><i>Section 402(a) of SMCRA, as revised.</i></p>
<b>Reclamation fee expiration date</b>	<p>September 30, 2007. After that date, OSM must set rates based on transfers to CBF.</p> <p>[<i>Sec. 402(b), as amended</i>]</p>	<p>September 30, 2021. Removes authority for OSM to set rates administratively after that date.</p> <p><i>Section 402(b) of SMCRA, as revised.</i></p>
<b>Mandatory distribution of AML reclamation fee collections?</b>	<p>No. Congress must first authorize distribution of AML fund revenues through the annual appropriations process, with the exception of interest earnings, which may be transferred to</p>	<p>Yes, beginning with FY 2008. Once fully phased in, approximately 83% of annual fee collections will be distributed to states and tribes outside the appropriations process.</p>

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	<p>the CBF without specific annual appropriation.</p>	<p>Requires annual distribution (mandatory spending not subject to appropriation) to noncertified 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. <i>Section 401(d)(3), (f)(1), and (f)(2) of SMCRA.</i></p> <p>The legislation 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. <i>Section 401(f)(5) of SMCRA.</i></p> <p>Certified states and Indian tribes are not entitled to this mandatory distribution because they have never been eligible for grants under the historical production allocation (see section 402(g)(5) of SMCRA) and because this legislation further specifies that they are not eligible to receive allocations of their state or tribal share, beginning October 1, 2007. <i>Section 401(f)(3)(B) of SMCRA.</i></p> <p>Because certified states and Indian tribes also are no longer eligible to receive allocations under section 402(g)(1) (state and tribal share allocations), that amount is not included in the distribution formula. However, beginning with FY 2008, certified states and tribes will receive annual payments from the Treasury in lieu of the amount of fee revenues for that year that would otherwise have been allocated to them as state or tribal share in the absence of new section 401(f)(3)(B) of SMCRA. <i>Section 411(h)(2) of SMCRA.</i></p>

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		<p>For the first 3 years, payments from the Treasury to certified states and tribes for purposes of the preceding paragraph will be reduced to 25%, 50%, and 75%, respectively of the amount that the states and tribes would otherwise receive under this provision. States and tribes will receive the difference in two separate annual payments beginning with FY 2018. <i>Section 411(h)(3)(B) and (C) of SMCRA.</i></p> <p>An amount of fee revenues equal to the annual Treasury payments to certified states and tribes under paragraphs (h)(1) [existing unappropriated balance of state and tribal share allocations] and (h)(2) [ongoing state and tribal share allocations] of section 411 of SMCRA must be reallocated to the historical production allocation. <i>Section 411(h)(4) of SMCRA.</i></p> <p>The mandatory annual distribution to noncertified 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 does not include amounts reallocated to the historical production allocation as a result of Treasury payments in lieu of the existing unappropriated balance. <i>Section 401(f)(3) of SMCRA.</i></p> <p>In short, the mandatory annual distribution to noncertified states and tribes includes the following components:</p> <ul style="list-style-type: none"> <li>• State/tribal share allocation for noncertified states and tribes for the preceding fiscal year.</li> <li>• Historical production allocation for the preceding fiscal year.</li> </ul>

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		<ul style="list-style-type: none"> <li>• 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.</li> <li>• The amount needed from the Secretary’s discretionary share to implement the minimum program grant guarantee under section 402(g)(8) of SMCRA.</li> </ul> <p>Distributions will be in addition to any amounts appropriated by Congress. <i>Section 401(f)(5) of SMCRA.</i></p> <p>Expenditures for federal AML projects in non-program states, the emergency reclamation program, administrative expenses, the small operator assistance program (SOAP) (however, we have not requested appropriations for SOAP since FY 2006), the Clean Streams program, and watershed cooperative agreements remain subject to appropriation. <i>Section 401(d) of SMCRA.</i></p>
<p><b>Allocation formula for AML fund income</b></p>	<p>Assigns 50% of all fees collected from operations within the jurisdiction of a state or tribe to an account reserved for that state or tribe.</p> <p>The remaining 50% of fees collected, plus 100% of all other AML fund revenue (less interest transferred to the CBF) is allocated as follows:</p> <ul style="list-style-type: none"> <li>• 20% to RAMP (USDA).</li> <li>• 40% for grants to uncertified states and</li> </ul>	<p><u>State/Tribal share.</u> Beginning with 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). <i>Section 401(f)(3)(B) of SMCRA.</i></p> <p>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. <i>Section 411(h)(4) of SMCRA.</i></p>

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	<p>tribes based on historical coal production in the state or on tribal lands before August 3, 1977.</p> <ul style="list-style-type: none"> <li>40% to the Secretary's discretionary share for administrative expenses, federal reclamation programs, SOAP, etc.</li> </ul> <p>[Sec. 402(g)]</p>	<p><u>Rural Abandoned Mine Program (RAMP) share.</u> Eliminates the RAMP allocation for future revenues. <i>Sections 401(c) and 402(g)(2) of SMCRA.</i></p> <p><u>Historical production share.</u> Increases the historical production allocation by the amount of the former RAMP allocation. <i>Section 402(g)(5) of SMCRA.</i></p> <p><u>Secretary's discretionary share.</u> Amount remains unchanged, but new language specifies that minimum-program grant make-up funds must come from this allocation. <i>Section 402(g)(3)(E) and (8) of SMCRA.</i></p> <p><i>Sections 401(f)(3)(B), 402(g) and (i) and 411(h) of SMCRA, as revised.</i></p>
<p><b>Special provisions for disposition of existing unappropriated balance of State-share allocations</b></p>	<p>N.A.</p>	<p>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. <i>Section 411(h)(1) of SMCRA.</i></p> <p>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. <i>Section 402(i)(2) of SMCRA.</i></p> <p>The Secretary of the Treasury must transfer these funds to the Secretary of the Interior for distribution to states and Indian tribes. <i>Section 402(i)(2) of SMCRA.</i></p> <p>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</p>

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		<p>this legislation. 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. <i>Section 402(i)(3) of SMCRA.</i></p> <p>Disbursements must be made without regard to any limitation under section 401(d) of SMCRA and concurrently with payments to states under that section. <i>Section 411(h)(3)(A) of SMCRA.</i></p> <p>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. <i>Section 411(h)(1)(D)(i) of SMCRA.</i></p> <p>Noncertified States and tribes must use their payments for the purposes of section 403. <i>Section 411(h)(1)(D)(ii) of SMCRA.</i></p> <p>Each year, an amount 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. <i>Section 411(h)(1)(A)(ii) and (h)(4) of SMCRA.</i></p>
<b>Disposition of unappropriated balance of RAMP allocation</b>	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.	Makes that portion of the unappropriated balance allocated before the date of enactment of the bill available for transfer to the three UMWA retiree benefit plans. <i>Section 402(h)(4)(B) of SMCRA.</i>
<b>Transfers to UMWA retiree health benefit plans</b>	Requires annual transfer of interest estimated to be earned by the AML fund each fiscal year, beginning with FY 1996. If that amount is less	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, the 1992 Plan, and the 1993

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	<p>than \$70 million, may be supplemented up to that level by interest earned in FY 1993-1995.</p> <p>Transfers are limited to the amount needed to cover health benefits for unassigned beneficiaries under the UMWA's Combined Benefit Fund (CBF).</p> <p>In addition, a legal opinion from DOI's Solicitor places \$70 million cap on transfers for any one year.</p> <p><i>[Sec. 402(h)]</i></p>	<p>Plan), to the extent payments from premiums and other sources do not meet those plans' expenditure needs, subject to certain limitations. <i>Section 402(h) of SMCRA.</i></p> <p>Makes the unappropriated balance of the RAMP allocation as of the date of enactment available for transfer to the UMWA plans, although most of this amount has already been transferred to the Secretary's discretionary share by the FY 2006 Interior appropriations act. <i>Section 402(h)(4)(B) of SMCRA.</i></p> <p>Additional transfers to the CBF (for amounts exceeding the now-defunct \$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. <i>Section 402(h)(1), (2), and (5)(C) of SMCRA.</i></p> <p>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 and tribal share allocations and all transfers to the three UMWA plans. <i>Section 402(i)(1) of SMCRA.</i></p> <p>Sets aside all interest earned by the AML fund before enactment of this legislation 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 <u>not</u> be used to</p>

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		<p>pay the CBF premium refunds to operators authorized under section 402(i)(1)(C) of SMCRA. <i>Section 402(h)(4)(A) of SMCRA.</i></p> <p>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. <i>Section 402(h)(4)(C) of SMCRA.</i></p> <p>In general, the three UMWA plans must exhaust all available revenue sources more or less in the following order:</p> <ul style="list-style-type: none"> <li>• Premiums paid by operators and other UMWA revenues (although the legislation also phases out premiums for unassigned beneficiaries).</li> <li>• Payments from other federal agencies for benefit purposes, e.g., for the Medicare prescription drug program.</li> <li>• Estimated interest to be earned by the AML fund during the fiscal year in question.</li> <li>• Unappropriated balance of the RAMP allocation.</li> <li>• 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.</li> <li>• Reserve fund created from existing stranded interest earned by the AML fund.</li> </ul>
<b>Minimum program threshold and funding</b>	Minimum annual \$2 million allocation for each state and Indian tribe with an approved AML	Requires minimum annual \$3 million grant funding for each state and Indian tribe with an approved AML reclamation plan,

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	<p>reclamation plan, eligible lands and waters, and priority 1 or 2 sites, although Congress has appropriated only \$1.5 million annually for grants for this purpose.</p> <p>[<i>Sec. 402(g)(8)</i>]</p>	<p>eligible lands and waters, and priority 1 or 2 sites. <i>Section 402(g)(8)(A) of SMCRA.</i></p> <p>The minimum grant funding guarantee applies to Tennessee and Missouri regardless of program status or other provisions (“notwithstanding any other provision of law”). <i>Section 402(g)(8)(B) of SMCRA.</i></p> <p>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. <i>Section 402(g)(3)(E) and (8) of SMCRA.</i></p> <p>The minimum program grant funding guarantee will be phased in over four years. States and tribes will receive grants at 50% of that level for the first two years and at 75 % of that level for the next two years. <i>Section 401(f)(5) of SMCRA.</i></p>
<p><b>Allowable uses of Secretary’s discretionary share</b></p>	<ul style="list-style-type: none"> <li>• Small operator assistance program.</li> <li>• Emergency reclamation program.</li> <li>• Federal reclamation programs.</li> <li>• Administrative expenses.</li> </ul> <p>[<i>Sec. 402(g)(3)</i>]</p>	<p>Same as existing law, plus providing make-up funds for minimum program grants to states and tribes.</p> <p><i>Section 402(g)(3) of SMCRA, as revised.</i></p>
<p><b>Use of AML grant funds for water supply restoration in noncertified states and tribes</b></p>	<p>Limited to 30% of state-share and historical production grant funds awarded to noncertified states and tribes.</p> <p>[<i>Sec. 403(b)(1)</i>]</p>	<p>Removes the 30% cap.</p> <p><i>Section 403(b)(1)(D) of SMCRA, as revised.</i></p>
<p><b>Set-aside for future</b></p>	<p>States may set aside up to 10% of state-share</p>	<p>Deletes authorization for this set-aside.</p>

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<b>reclamation</b>	<p>and historical production grant funds in interest-bearing trust fund for future AML reclamation projects. Funds may not be expended before Sept. 30, 1995.</p> <p><i>[Sec. 402(g)(6)(A)]</i></p>	<p><i>Section 402(g)(6)(A) of SMCRA deleted.</i></p>
<b>Set-aside for acid mine drainage treatment and abatement</b>	<p>States may set aside up to 10% of state-share and historical production grant funds in interest-bearing trust fund for comprehensive abatement and treatment of AMD in qualified hydrologic units in accordance with plans approved by the Secretary.</p> <p><i>[Sec. 402(g)(6)(B) and (g)(7)]</i></p>	<p>Increases amount that may be set aside to 30% of state-share and historical production grant funds.</p> <p>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.</p> <p><i>Section 402(g)(6) of SMCRA, as revised.</i></p>
<b>AML reclamation project priorities</b>	<p>Requires that AML reclamation expenditures “reflect” the following priorities in the order stated:</p> <ul style="list-style-type: none"> <li>• P1: Protection of public health, safety, general welfare, and property from extreme danger.</li> <li>• P2: Protection of public health, safety, general welfare, and property.</li> <li>• P3: Restoration of land and water resources and the environment.</li> <li>• P4: Protection, repair, replacement, construction, or enhancement of public</li> </ul>	<p>Eliminates P4 and P5.</p> <p>Eliminates general welfare as a component of P1 and P2.</p> <p>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.</p> <p>Reclassifies P3 lands and waters adjacent to P1 and P2 sites as P1 or P2.</p> <p><i>Sections 403(a) and 402(g)(2) and (7) of SMCRA, as revised.</i></p>

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	<p>facilities adversely affected by coal mining practices.</p> <ul style="list-style-type: none"> <li>• P5: Development of publicly owned land adversely affected by coal mining practices.</li> </ul> <p><i>[Sec. 403(a)]</i></p>	
<b>Lien waivers</b>	<p>Prohibits filing a lien 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.</p> <p><i>[Sec. 408(a)]</i></p>	<p>Same as existing law, but without the requirement that the person have owned the surface before May 2, 1977.</p> <p><i>Section 408(a) of SMCRA, as revised.</i></p>
<b>Authorizes the Secretary to certify completion of coal reclamation without prior request from the state or tribe?</b>	<p>No.</p> <p><i>[Sec. 411(a)]</i></p>	<p>Yes, after publishing notice in the <u>Federal Register</u> and providing opportunity for public comment.</p> <p><i>Section 411(a) of SMCRA, as revised.</i></p>
<b>Remining incentives</b>	<p>The reduced revegetation responsibility period (2 years in the East and 5 years in the West) and the exemption from the section 510(c) permit-block sanction for remining operations expired September 30, 2004.</p> <p><i>[Sec. 510(e)]</i></p>	<p>Makes the expired incentives permanent by removing the expiration date. <i>Section 510(e) of SMCRA, as revised.</i></p> <p>Authorizes the Secretary to adopt other remining incentives (e.g., fee waivers or the use of AML funds to provide bond guarantees) by regulation, but requires that, in <u>each</u> 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. <i>New section 415 of SMCRA.</i></p>

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<p><b>Authorizes Indian tribes to assume primacy for regulation of surface coal mining and reclamation operations?</b></p>	<p>No. <i>[Sec. 710]</i></p>	<p>Yes. Establishes conditions under Indian tribes may assume primary authority for the regulation, in whole or in part, of surface coal mining and reclamation operations on reservation lands. Also requires study of advisability of extending authority for primacy to other Indian lands.  <i>New section 710(j) of SMCRA.</i></p>