DEPARTMENT OF THE INTERIOR  
Office of Surface Mining Reclamation and Enforcement  
30 CFR Part 773  
RIN 1029–AB80  
Notification and Permit Processing  
AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.  
ACTION: Proposed rule; withdrawal.  
SUMMARY: After reviewing comments received during the public comment period, the Office of Surface Mining Reclamation and Enforcement (OSM) is withdrawing the proposed Notification and Permit Processing rule published in the Federal Register on October 26, 1994 (59 FR 53884).  
DATES: This withdrawal is effective September 10, 1997.  
FOR FURTHER INFORMATION CONTACT: Scott Boyce, 1951 Constitution Avenue, N.W., Washington, DC 20240; Telephone: (202) 208–2986 commercial or FTS. E-mail: sboyce@osmre.gov.

DEPARTMENT OF THE INTERIOR  
Office of Surface Mining Reclamation and Enforcement  
30 CFR Part 870  
RIN 1029–AB93  
Abandoned Mine Land Reclamation Fund Reauthorization Implementation  
AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.  
ACTION: Proposed rule.  
SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is proposing to remove its regulation at 30 CFR 870.17. The regulation governs the scope of audits conducted in connection with OSM’s abandoned mine land reclamation program.  
DATES: Written comments: OSM will accept written comments on the proposed rule until 5 p.m., Eastern time, on November 10, 1997.  
Public hearings: Upon request, OSM will hold public hearings on the proposed rule at dates, times and locations to be announced in the Federal Register prior to the hearings. OSM will accept requests for public hearings until 5 p.m., Eastern time, on October 1, 1997. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under FOR FURTHER CONTACT before the hearing date to verify that the hearing will be held.  
ADDRESSES: Written comments: Hand-deliver or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 117, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.  
Electronic Mail: You may send comments through the Internet to OSM’s Administrative Record at: osmrules@osmre.gov. Copies of any messages received electronically will be filed with the Administrative Record.  
Public hearings: You may submit a request for a public hearing orally or in writing to the person and address specified under FOR FURTHER INFORMATION CONTACT.  
FOR FURTHER INFORMATION CONTACT: Jim Krawchyk, Division of Compliance Management, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220. Telephone 412–921–2676. E-mail: jkrawchyk@osmre.gov.

SUPPLEMENTARY INFORMATION: In a letter dated September 29, 1992, Mr. Jim B. Wyatt of Vincennes, Indiana, presented a petition for rulemaking to OSM. The “Notice of availability of a petition to initiate rulemaking and request for comment” was published in the Federal Register on November 12, 1992 (57 FR 53670). On August 24, 1993 (58 FR 44630), the Director of OSM published his “Notice of decision on petition for rulemaking” and stated that OSM would initiate Federal rulemaking. The proposed rule was published in the Federal Register on October 26, 1994 (59 FR 53884), and would have revised the permit notification provisions of 30 CFR 773.15 and the permit processing provisions of 30 CFR 773.15(c) and 773.17. On December 23, 1994 (59 FR 66287), OSM extended the comment period for the proposed rule until February 27, 1995. In order to accommodate requests for a public hearing the comment period was reopened on March 10, 1995, and extended until March 23, 1995. A public hearing was held on March 16, 1995, in Vincennes, Indiana.  
Comments on the proposed rulemaking reveal that there are no widespread problems with the existing rules that warrant a national rulemaking. Accordingly, the proposed rule published on October 26, 1994 (59 FR 53884), is withdrawn.

Bob Armstrong,  
Assistant Secretary, Land and Minerals Management.  
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be considered or included in the Administrative Record for the final rule. Public hearings: OSM will hold a public hearing on the proposed rule 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 Mr. Krawchyk (see FOR FURTHER INFORMATION CONTACT), either orally or in writing, of the desired hearing location by 5:00 p.m., Eastern time, on October 1, 1997. If no one has contacted Mr. Krawchyk to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, OSM requests that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist us in preparing appropriate questions, we also request, if possible, that each person who plans to testify submit to us at the address previously specified for the submission of written comments (see ADDRESSES) an advance copy of his or her testimony.

II. Background

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508. Included in that law was the Abandoned Mine Reclamation Act of 1990 (AMRA) which amended the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq. On May 31, 1994, OSM published final regulations in the Federal Register (59 FR 28136) implementing the provisions of AMRA. The final regulations included a version of 30 CFR 870.17 which specifies who may conduct audits and whose records may be examined. The revision, utilizing the authority in sections 201(c), 402(d)(2) and 413(a) of SMCRA, expanded the scope of section 870.17 to cover the records of all persons involved in a coal transaction, including permittees, operators, brokers, purchasers, and persons operating preparation plants and tipple facilities, and any recipient of royalty payments from the coal mining operation.

In July 1995, the National Coal Association and the American Mining Congress, predecessor organizations of the National Mining Association (NMA), filed suit challenging the regulations promulgated by OSM, specifically the scope of 30 CFR 870.17. On July 23, 1996, In National Mining Ass'n v. U.S. Department of the Interior, No. 94–1642 (D.D.C.), the United States District Court for the District of Columbia ruled in favor of OSM. NMA appealed the district court's decision to the United States Court of Appeals for the District of Columbia. After the parties engaged in court-ordered mediation, the Department of Justice, upon OSM's request, filed a motion to hold the case in abeyance pending new rulemaking to resolve the issues in dispute and the U.S. Court of Appeals granted the motion.

On June 3, 1997, OSM published in the Federal Register a notice that it was suspending this rule (See 62 FR 30232). During the period of suspension, OSM continued to conduct audits of operators of surface coal mining operations, as necessary, under the provisions of section 402(d)(2) of SMCRA, and 30 CFR 870.16.

III. Discussion of Proposed Rule

OSM is not proposing to move section 870.17. In the litigation discussed above, the NMA raised concerns over the scope of this regulation. The District Court upheld OSM's final rule and granted summary judgment in favor of defendants. While the District Court acknowledged that "Section 1232(d)(2) does not provide authority for audits or inspections of those not directly regulated under SMCRA," it nevertheless upheld OSM's rule on the ground that the agency has authority under SMCRA's general rulemaking provisions to authorize "broader audits and record inspections" than those permitted by Section 1232(d)(2).

NMA claims that the court erred and appealed. The NMA states that both OSM and the District Court are required to give effect to Congress' clearly expressed intent to limit the Secretary's audit authority to persons already "subject to" Title IV of SMCRA — i.e., coal mine operators. The NMA alleges that SMCRA's general rulemaking provisions do not give OSM authority to assert audit jurisdiction broader in scope than that expressly provided for in the Act.

The NMA also alleges that OSM's interpretation contravenes the Fourth Amendment of the Constitution by subjecting persons other than surface coal mining operators to warrantless searches of "all books, papers, and other documents." Although OSM does not agree with the arguments made by the NMA, it does recognize the serious nature of the issues raised. Given these concerns, OSM is proposing to remove this specific rule. OSM does not believe that the removal will hinder its audit or collection efforts, however. OSM still possesses significant administrative authority, as well as the general audit authority in SMCRA section 402(d)(2), 30 U.S.C. 1232(d)(2), and 30 CFR 870.16 of the Secretary's regulations. OSM believes that Congress specifically directed the agency to "conduct such audits of coal production and the payment of fees under [Title IV] as may be necessary to ensure full compliance with the provisions of this title." The agency will continue to carry out this legislative mandate.

IV. Procedural Matters

Paperwork Reduction Act

This proposed rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. Executive Order 12866.

This proposed rule is not a significant rule under the criteria of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Department of the Interior pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., certifies this proposed rule will not have a significant economic effect on a substantial number of small entities for the same reason that the promulgation of the rule in 1994 did not have such an impact. The particular provision being suspended governs the scope of audits conducted by OSM and will have no economic impact on small entities.

Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this rule meets the requirements of sections (3)(a) and (3)(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act

The removal action will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

National Environmental Policy Act

This proposed rule has been reviewed by OSM, and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.
The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Bowers Landfill Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.