

**Authority:** 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761-766, unless otherwise noted.

9. Section 190.10 is amended by revising paragraph (c)(1) to read as follows:

**§ 190.10 General.**

\* \* \* \* \*

(c) *Disclosure statement for non-cash margin.* (1) Except as provided in § 1.65, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer, other than a customer specified in § 1.55(f) of this chapter, to margin, guarantee, or secure a commodity contract unless the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under § 1.55(c) of this chapter and set forth in appendix A to § 1.55 which the Commission finds satisfies this requirement.

\* \* \* \* \*

Issued in Washington, DC on September 3, 1997 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97-23882 Filed 9-9-97; 8:45 am]

BILLING CODE 6351-01-P

**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.

**SUPPLEMENTARY INFORMATION:** In a letter dated September 29, 1992, Mr. Jim B. Wyant 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.

Dated: September 4, 1997.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 97-23957 Filed 9-9-97; 8:45 am]

BILLING CODE 4310-05-M

**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, NW., 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**. The address, date and time for any public hearing held will be announced prior to the hearings. Any individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Jim Krawchuk, Division of Compliance Management, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220. Telephone 412-921-2676. E-mail: jkrawchuk@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule and Guidelines
- IV. Procedural Matters

**I. Public Comment Procedures**

**Written Comments:** Written or electronic comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed above (see **ADDRESSES**), may not

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. Krawczyk (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. Krawczyk 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 tipples, and any recipient of royalty payments from the coal mining operation.

In July 1994, 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 further 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.

Author: The principal author of this rule is Jim Krawchuk, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220.

### List of Subjects in 30 CFR Part 870

Incorporation by reference, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: September 4, 1997.

#### Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

Accordingly, 30 CFR part 870 would be amended as set forth below.

### PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for Part 870 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

#### § 870.17 [Removed]

2. Section 870.17 is removed.

[FR Doc. 97-23958 Filed 9-9-97; 8:45 am]

BILLING CODE 4310-05-M

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-5886-1]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Bowers Landfill Superfund Site from the national priorities list; request for comments.

**SUMMARY:** The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Bowers Landfill Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and U.S. EPA, in

consultation with the State of Ohio, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

**DATES:** Comments concerning the proposed deletion of the site from the NPL may be submitted on or before October 10, 1997.

**ADDRESSES:** Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR-6J), Chicago, IL 60604.

Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Pickaway County District Public Library 165 E. Main St., Circleville, OH 43113. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

#### FOR FURTHER INFORMATION CONTACT:

Gladys Beard (SR-6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-7253 or Leo Rosales (P-19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-6198.

#### SUPPLEMENTARY INFORMATION:

Table of Contents  
I. Introduction  
II. NPL Deletion Criteria  
III. Deletion Procedures  
IV. Basis for Intended Site Deletion

#### I. Introduction

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.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

#### II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA considers, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

#### III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to