

(A) The DISC gross receipts pricing rule of section 994(a)(1) corresponds to the gross receipts pricing rule of section 925(a)(1);

(B) The DISC combined taxable income pricing rule of section 994(a)(2) corresponds to the combined taxable income pricing rule of section 925(a)(2); and

(C) The DISC section 482 pricing rule of section 994(a)(3) corresponds to the section 482 pricing rule of section 925(a)(3).

(ii) *Special rules.* For purposes of this section—

(A) The DISC pricing rules of section 994(a)(1) and (2) shall be determined without regard to export promotion expenses;

(B) Qualified export receipts under section 994(a)(1) and (2) shall be deemed to be an amount equal to the foreign trading gross receipts arising from the transaction; and

(C) Combined taxable income for purposes of section 994(a)(2) shall be deemed to be an amount equal to the combined taxable income for purposes of section 925(a)(2) arising from the transaction.

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* (i) R and F are calendar year taxpayers. R, a domestic manufacturing company, owns all the stock of F, which is a FSC acting as a commission agent for R. For the taxable year, R and F used the combined taxable income pricing rule of section 925(a)(2). For the taxable year, the combined taxable income of R and F is \$100 from the sale of export property, as defined in section 927(a), manufactured by R using production assets located in the United States. Title to the export property passed outside of the United States.

(ii) Under section 925(a)(2), 23 percent of the \$100 combined taxable income of R and F, that is \$23, is allocated to F and the remaining \$77 is allocated to R. Absent the special sourcing rule, under section 863(b) the \$77 income allocated to R would be sourced \$38.50 U.S. source and \$38.50 foreign source. Under the special sourcing rule, the amount of foreign source income earned by a related supplier of a FSC shall not exceed the amount that would result if the corresponding DISC pricing rule applied. The DISC combined taxable income pricing rule of section 994(a)(2) corresponds to the combined taxable income pricing rule of section 925(a)(2). Under section 994(a)(2), \$50 of the combined taxable income ( $\$100 \times .50$ ) would be allocated to the DISC and the remaining \$50 would be allocated to the related supplier. Under section 863(b), the \$50 income allocated to the DISC's related supplier would be sourced \$25 U.S. source and \$25 foreign source. Accordingly, under the special sourcing rule, the foreign source income of R shall not exceed \$25.

*Example 2.* (i) Assume the same facts as in *Example 1* except that the combined taxable

income arises from the licensing of the copyright rights in computer software for use outside of the United States and that R developed the computer software in the United States.

(ii) Under section 925(a)(2), 23 percent of the \$100 combined taxable income of R and F, that is \$23, is allocated to F and the remaining \$77 is allocated to R. Absent the special sourcing rule, under section 862(a)(4) the \$77 income allocated to R would be sourced \$77 foreign source in its entirety. Under the special sourcing rule, the amount of foreign source income earned by a related supplier of a FSC shall not exceed the amount that would result if the corresponding DISC pricing rule applied. The DISC combined taxable income pricing rule of section 994(a)(2) corresponds to the combined taxable income pricing rule of section 925(a)(2). Under section 994(a)(2), \$50 of the combined taxable income ( $\$100 \times .50$ ) would be allocated to the DISC and the remaining \$50 would be allocated to the related supplier. Under section 862(a)(4), the \$50 income allocated to the DISC's related supplier would be sourced \$50 foreign source in its entirety. Accordingly, under the special sourcing rule, the foreign source income of R shall not exceed \$50.

*Example 3.* (i) Assume the same facts as in *Example 1* except that R and F used the gross receipts pricing rule of section 925(a)(1). In addition, for the taxable year foreign trading gross receipts derived from the sale of the export property are \$2,000.

(ii) Under section 925(a)(1), 1.83 percent of the \$2,000 foreign trading gross receipts, that is \$36.60, is allocated to F and the \$63.40 remaining combined taxable income ( $\$100 - \$36.60$ ) is allocated to R. Absent the special sourcing rule, under section 863(b) the \$63.40 income allocated to R would be sourced \$31.70 U.S. source and \$31.70 foreign source. Under the special sourcing rule, the amount of foreign source income earned by a related supplier of a FSC shall not exceed the amount that would result if the corresponding DISC pricing rule applied. The DISC gross receipts pricing rule of section 994(a)(1) corresponds to the gross receipts pricing rule of section 925(a)(1). Under section 994(a)(1), \$80 ( $\$2,000 \times .04$ ) would be allocated to the DISC and the \$20 remaining combined taxable income would be allocated to the related supplier. Under section 863(b), the \$20 income allocated to the DISC's related supplier would be sourced \$10 U.S. source and \$10 foreign source. Accordingly, under the special sourcing rule, the foreign source income of R shall not exceed \$10.

(c) *Effective Date.* The rules of this section are applicable to taxable years beginning after December 31, 1997.

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

Approved: February 20, 1998.

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

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## 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:** Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is removing its regulation at 30 CFR 870.17. The regulation concerns the scope of audits conducted in connection with OSM's abandoned mine land reclamation program.

**EFFECTIVE DATE:** The removal of the audit regulation at 30 CFR 870.17 is effective on April 2, 1998.

**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. Background
- II. Discussion of Final Rule and Comments
- III. Procedural Matters

#### I. Background

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. Included in this 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 revision 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. The 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 (62 FR 30232), OSM published in the **Federal Register** a notice that it was suspending 30 CFR 870.17. 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) or SMCRA, and 30 CFR 870.16.

After further examination of the matter, OSM published a proposal in the **Federal Register** on September 10, 1997 (62 FR 47617) to remove section 870.17. The proposal was open for public comment until November 10, 1997.

## II. Discussion of Final Rule

In this final rule OSM is removing section 870.17. In the above previously referenced litigation, 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 "§ 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 covered by § 1232(d)(2).

The NMA claimed that the court erred and appealed. The NMA stated 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 the persons already "subject to" Title IV—i.e., coal mine operators. The NMA alleged 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 alleged 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 all the arguments made by the NMA, it does recognize the serious nature of the issues raised. OSM also understands that the general audit authority is still specified in section 402(c) of SMCRA, and that it has broad administrative authority granted under section 201(c) of SMCRA. Accordingly, OSM does not believe that the withdrawal will hinder its audit or collection efforts.

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." 30 U.S.C. 1232(d)(2). The agency will carry out this legislative mandate, as it is set out in section 402(d)(2) of SMCRA.

### Comments Received

Two parties commented on the proposed rule, agreeing with the proposal for removal. However, both parties raised some concerns.

First, they pointed out that the preamble to the proposed rule in section III was somewhat confusing, stating that OSM was "not proposing to move section 870.17." This was a typographical error by the **Federal Register**, which published a correction notice on Tuesday, November 18, 1997 (62 FR 61585). The line should have read that OSM is "now proposing to remove section 870.17." Although other segments of the original publication made it clear that we were proposing a removal, we regret that this error was made.

Second, the commenters were concerned about a passage stating that Congress specifically directed OSM to conduct such audits of coal production and the payments of AML fees as may be necessary to ensure full compliance with the provisions of Title IV. The commenters stated that OSM should clarify its intent through this rule to limit audits to only operators of coal mining operations. As we have stated above, OSM will conduct its audits in conformance with the provisions of section 402(d)(2) of SMCRA. That section provides for the Secretary to conduct audits of any surface coal mining and reclamation operation, including without limitation, tipplers and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of fees under this title. While OSM's audit authority may be limited to those persons subject to the provisions

of SMCRA, OSM intends to continue to seek voluntary information from a variety of sources so that it may meet its mandatory responsibility to ensure full and complete payment of the fees. The Secretary is also provided administrative subpoena authority in section 201(c) of SMCRA. OSM intends to utilize this authority if the need arises to obtain information for determining compliance, but will restrict audits to those entities covered in the law.

## III. Procedural Matters

### Effect on State Programs

The withdrawal of this rule will have no effect on State or tribal AML programs. Collection of the AML reclamation fee is a purely Federal responsibility.

### Paperwork Reduction Act

This rule withdrawal 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 final rule is not considered significant 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 that this rule withdrawal does 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 withdrawn 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 withdrawal 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 rule withdrawal 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 withdrawal is Jim Krawczyk, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220.

#### List of Subjects in 30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: February 18, 1998.

**Sylvia V. Baca,**

*Deputy Assistant Secretary for Land and Minerals Management.*

For the reasons set forth in the preamble, 30 CFR part 870 is being 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.

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#### DEPARTMENT OF THE INTERIOR

##### Office of Surface Mining Reclamation and Enforcement

##### 30 CFR Part 916

[SPATS No. KS-017-FOR]

##### Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Kansas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kansas proposed revisions to and additions of regulations pertaining to communications, petitions to initiate rulemaking, notice of citizen suits, preparation and submission of reports by the permittee, definitions, permit applications, administrative hearing procedures, civil penalties, permit

review, permit revision, permit renewals, permit transfers, assignments, and sales, permit conditions, permit suspension or revocation, termination of jurisdiction, exemption for coal extraction incidental to government-financed highway or other construction, exemption for coal extraction incidental to the extraction of other minerals, coal exploration, bonding procedures, performance standards, revegetation, interim performance standards, underground mining, small operator assistance program, lands unsuitable for surface mining, training, certification, and responsibilities of blasters and operators, employee financial interests, inspection and enforcement, eligible lands and water, reclamation project evaluation, consent to entry, liens, appraisals, contractor responsibility, exclusion of certain noncoal reclamation sites, and abandoned mine land reclamation plan reports. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations. **EFFECTIVE DATE:** March 3, 1998.

##### FOR FURTHER INFORMATION CONTACT:

Russell W. Frum, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460.

##### SUPPLEMENTARY INFORMATION:

- I. Background on the Kansas Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

##### I. Background on the Kansas Program

The Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981, and the Kansas abandoned mine land reclamation plan on February 1, 1982. General background information on the Kansas regulatory program and the Kansas abandoned mine land reclamation plan, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5892) and the February 1, 1982, **Federal Register** (47 FR 4513), respectively. Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.10, 916.12, 916.15, 916.16, 916.20, and 916.25.

##### II. Submission of the Proposed Amendment

By letter dated May 7, 1997 (Administrative Record No. KS-615), Kansas submitted a proposed amendment to its program pursuant to

SMCRA. Kansas submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the June 4, 1997, **Federal Register** (62 FR 30535) and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on July 7, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to K.A.R. 47-2-53, definition for regulatory authority; K.A.R. 47-2-75(6)(A), definition for director; K.A.R. 47-3-42(a)(49)(B) and (a)(49)(E), procedures for challenging ownership or control links shown in AVS; K.A.R. 47-3-42(a)(50)(E), standards for challenging ownership or control links and the status of violations; K.A.R. 47-5-5a(c)(4)(D), review of waiver determination; K.A.R. 47-5-5a(c)(6)(C)(i) and (c)(6)(E), summary disposition; K.A.R. 47-6-4(c), permit transfers, assignments, and sales; K.A.R. 47-6-8(b), termination of jurisdiction; K.A.R. 47-6-9(b)(3), exemption for coal extraction incidental to government-financed highway or other construction; K.A.R. 47-6-10(b)(4), exemption for coal extraction incidental to the extraction of other minerals; K.A.R. 47-7-2(b)(6) and (b)(8), coal exploration; K.A.R. 47-8-9(a)(1) and (b)(8), bonding procedures; K.A.R. 47-9-1(c), performance standards—surface mining activities; K.A.R. 47-9-1(c)(17) and (e)(17), use of explosives: general requirements; K.A.R. 47-9-1(c)(35), backfilling and grading: time and distance requirements; K.A.R. 47-9-1(j)(9), substitution of Kansas terms for Federal terms in 30 CFR Parts 816 and 817; K.A.R. 47-16-1, eligible lands and water; K.A.R. 47-16-6(d), liens; K.A.R. 47-16-9(a), contractor responsibility; K.A.R. 47-16-10(b)(1), exclusion of certain noncoal reclamation sites; and K.A.R. 47-16-11 (a)(2)(A) and (b)(2)(A), reports. OSM notified Kansas of the concerns by letter dated October 8, 1997 (Administrative Record No. KS-615.5). By letter dated November 14, 1997 (Administrative Record No. KS-615.6), Kansas responded to OSM's concerns by submitting explanatory information and revisions to its proposed program amendment. Kansas proposed additional revisions and additions to K.A.R. 47-2-53, definition for regulatory authority; K.A.R. 47-2-75a(6)(A), definition for director; K.A.R. 47-3-42(a)(49)(A), (a)(49)(D) and (a)(49)(G), procedures for challenging ownership or control links shown in