(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) 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, the foreign source income of R shall not exceed $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 × 0.04) would be allocated to the DISC and the $20 remaining combined taxable income would be allocated to the related supplier.

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 × 0.50) 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). (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 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 4. (i) Assume the same facts as in Example 1 except that (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 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 × 0.04) would be allocated to the DISC and the $20 remaining combined taxable income would be allocated to the related supplier. Under section 862(a)(4), 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.


Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

[FR Doc. 98–5128 Filed 3–2–98; 8:45 am]

BILLING CODE 4830–01–U
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) of 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 payment 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.

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 1.110.

Author: The principal author of this rule withdrawal is Jim Krawchyk, 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.


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.

[FR Doc. 98–5391 Filed 3–2–98; 8:45 am]

BILLING CODE 4310–05–M

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 incident to government-financed highway or other construction, exemption for coal extraction incidental to the extraction of other minerals, coal exploration, bonding procedures, performance standards, reclamation project evaluation, approval of permits, 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.


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

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.


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. 47–2–75(a)(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