

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029-AB95

Abandoned Mine Land (AML) Fee Collection and Coal Production Reporting on the OSM-1 Form

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) propose to amend our regulations governing Abandoned Mine Land (AML) reclamation fee reporting to allow for the electronic filing of the information required on the OSM-1 Form.

DATES: Written comments: We will accept written comments on the proposed rule until 5 p.m., Eastern time, on April 17, 2000.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time and location to be announced in the **Federal Register** prior to the hearing. We will accept requests for public hearings until 5 p.m., Eastern time, on March 17, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by any one of the following methods. You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre.gov.

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 hearing. Any disabled 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: Mr. Sean Spillane, Office of Surface Mining Reclamation and Enforcement, Denver Federal Center, Building 20, Room B-2005, Denver, Colorado 80225; Telephone 303-236-0330, Ext 278. E-mail: sspillan@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information.

II. What Would this Rule Do?

III. How Do I Submit Comments on the Proposed Rule?

IV. Procedural Matters and Certifications.

I. Background Information.**What Is the Abandoned Mine Land (AML) Reclamation Program?**

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Abandoned Mine Reclamation Fund (fund) in response to concern over extensive environmental damage caused by past coal mining activities. Money from the fund is used to reclaim abandoned and inadequately reclaimed mining areas where there is no continuing reclamation responsibility by any person under state or federal law. The fund is financed by a reclamation fee assessed on every ton of coal sold, used, or transferred at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal, and 10 cents per ton for lignite. The reclamation fee must be paid to OSM once every calendar quarter.

The authority to collect the reclamation fee at the above rate is due to expire in 2004. After that date, the fee will be established and collected at a rate sufficient to allow the Secretary to transfer from the fund to the United Mine Workers of America Combined Benefit Fund the sum necessary to fulfill the responsibilities under section 402(h) of SMCRA.

OSM administers the AML program and fund. Reclamation is accomplished through grants to approved state and tribal AML reclamation programs. These AML reclamation programs are implemented through regulations in 30 CFR subchapter R and through implementing guidelines published in the **Federal Register** on March 6, 1980 (45 FR 27123), and revised on December 30, 1996 (45 FR 68777). Currently, 23 states and 3 Indian tribes have approved AML reclamation programs.

How Is the AML Fee Reported Under the Current Regulations?

Section 402(b) of SMCRA, 30 U.S.C. 1232(b), requires companies to pay a reclamation fee on coal sold, used, or transferred no later than 30 days after the end of each calendar quarter. SMCRA and the implementing regulations also require all operators of coal mining operations to submit a statement identifying:

- (1) The permittee;
- (2) The operator in addition to the permittee;
- (3) The owner of the coal;
- (4) The person purchasing the coal;
- (5) The amount of coal sold, used, or transferred during the calendar quarter;
- (6) The type of coal;
- (7) The method of coal removal;

(8) The preparation plant, tippie, or loading point for the coal;

(9) The permit number required under section 506 of SMCRA; and

(10) The Mine Safety and Health Administration identification number.

Each quarterly report must also contain a notification of any changes in the information required by section 402(c) of SMCRA since the date of the preceding quarterly report. The accuracy of the report must be sworn to by the operator and notarized. The operator is responsible for the information provided and subject to the sanctions provided for in section 402(d)(1) of SMCRA. See 30 U.S.C. 1232(c) and 30 CFR 870.15.

II. What Would This Rule Change?

Currently, our regulations at 30 CFR 870.15(b) require that the operator use the OSM-1 Form to report the required information when paying the AML fee. A paper copy of the OSM-1 Form must be used and submitted. There is no provision for filing the OSM-1 Form electronically. By this rulemaking, we propose to accept future quarterly filings of the OSM-1 Form by approved electronic transmission in place of paper filings. Under current procedures, OSM uses information technology to reduce the reporting burden on those filing the OSM-1 Form. When the OSM-1 Form is mailed to a respondent, the majority of the information on the OSM-1 Form (i.e., company name, address, contact person, telephone number, permit number, MSHA ID, etc.) is already pre-printed on the OSM-1 before it is mailed to the respondent, thus reducing the time to complete the form. We expect to develop a computer-based electronic form that will also contain the company information. The respondent would only need to update changes, add the missing information, and send the electronic version of the OSM-1 Form back to OSM.

The electronic filing of the OSM-1 Form would be an option available to the reporting entity. However, because of the notary requirement in SMCRA, and because we are not aware of any means by which a document may be electronically notarized and transmitted, the operator (or entity reporting for the operator) would be required to print out and maintain on file, a properly notarized paper copy of the OSM-1 Form for review by OSM's Fee Compliance auditors.

We believe that the option of electronically transmitting data may result in some savings to those in industry who choose to use it and to the government. We hope that as electronic commerce becomes more sophisticated

the electronic notarization and transmission of documents will become possible. This would allow us to dispense with the requirement that the operator or reporting entity keep a notarized paper copy of the quarterly OSM-1 Form on file. We specifically request comments on any technology currently available which would allow the electronic notarization and transmission of documents so that we may dispense with the requirement in this proposed rule that the operator filing electronically also maintain a notarized paper copy of the OSM-1 Form.

We are proposing this rule under the authority of section 413(a) of SMCRA which gives the Secretary authority to do all things necessary or expedient, including the promulgation of rules, to implement and administer the provisions of Title IV of SMCRA.

III. How Do I Submit Comments on the Proposed Rule?

Written Comments: If you submit written or electronic comments on the proposed rule during the 60-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for any recommended change(s). Where practical, you should submit three copies of your comments. We may not be able to consider or include in the Administrative Record comments delivered to an address other than those listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1029-AB95" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202-208-2847.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public hearings: We 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. Sean Spillane (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 5:00 p.m., Eastern time, on March 7, 2000. If no one has contacted Mr. Spillane 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, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we ask that you give us a written copy of your testimony.

IV. Procedural Matters

1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Approximately 1,021 respondents submit the OSM-1 Form covering more than 3,900 permits 4 times a year. The proposed rule would give respondents the option of submitting the reports electronically. Because electronic filing under the proposed rule is optional and because the requirement to file the information already exists, any increase in costs that may result would be negligible.

b. This rule will not create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency. The rule merely provides the option of transmitting the required information electronically.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the findings that the additions to the rule will not significantly change costs to industry and will not affect state or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. Use of the electronic filing method for the OSM-1 Form would be an option for industry and it is expected that as technology improves its use may reduce the cost of reporting.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more for the reasons stated above.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions because the rule does not impose major new requirements on the coal mining industry or consumers.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises for the reason stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates

Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

5. *Executive Order 12630—Takings*

In accordance with Executive Order 12630, the rule does not have takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.

6. *Executive Order 13132—Federalism*

This proposed rule does not have Federalism implications. It would not have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.” As previously stated, the proposed rule would provide coal operators with the option of electronically filing reports which they are currently required to file in paper form with OSM. States are not involved in the process.

7. *Executive Order 12988—Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. *Paperwork Reduction Act*

The information collection authority for this rulemaking has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0063.

9. *National Environmental Policy Act*

OSM has reviewed this proposed rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

10. *Clarity of this Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this

proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A “section” appears in bold type and is preceded by the symbol “§” and a numbered heading; for example, § 773.15). (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: exsec@ios.doi.gov.

List of Subjects in 30 CFR Part 870

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

Dated: January 22, 2000.

Sylvia V. Baca,

Acting Assistant Secretary for Land and Minerals Management.

Accordingly, 30 CFR part 870 is proposed to 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.*

2. Section 870.15 is amended as follows:

a. In paragraph (b), remove the first sentence and add three new sentences in its place; and

b. Revise paragraph (d)(1)(iv) to read as follows:

§ 870.15 Reclamation fee payments.

* * * * *

(b) Each operator must use mine report Form OSM-1 (or any approved successor form) to report the tonnage of coal sold, used, or transferred. The report must also include the name and address of any person or entity who, in a given quarter, is the owner of 10 percent or more of the mineral estate for a given permit, and any entity or individual who, in a given quarter, purchases ten percent or more of the production from a given permit during the applicable quarter. The operator can file a report under this section either in paper format or in electronic format as specified in § 870.17. * * *

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(d) * * *

(1) * * *

(iv) Use OSM’s approved form or approved electronic form to report coal tonnage sold, used, or for which ownership was transferred, to the address indicated in the Instructions for Completing the OSM-1 Form.

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3. Section 870.17 is added to read as follows:

§ 870.17 Filing the OSM-1 Form electronically.

You, the operator, may submit a quarterly electronic OSM-1 Form in place of a quarterly paper OSM-1 Form. Submitting the OSM-1 Form electronically is optional. If you submit your form electronically, you must:

(a) Use a methodology and medium approved by OSM; and

(b) Maintain a properly notarized paper copy of the identical OSM-1 Form for review and approval by OSM’s Fee Compliance auditors. (This is needed to comply with the notary requirement in the Act.)

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