

FEDERAL REGISTER: 62 FR 30232 (June 3, 1997)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 870

Abandoned Mine Land Reclamation Fund Reauthorization Implementation; Partial Suspension

ACTION: Final rule; suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is suspending 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. The regulation is being suspended pending new rulemaking.

EFFECTIVE DATE: The suspension notice is effective June 3, 1997.

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: jkrawchy@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. 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. 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.

Therefore, OSM is suspending section 870.17 and will propose rulemaking to reconsider its scope. During the period of suspension, OSM will continue 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.

II. PROCEDURAL MATTERS

Executive Order 12866

This suspension notice has been reviewed under the criteria of Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., certifies this suspension 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.

National Environmental Policy Act

This 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.

LIST OF SUBJECTS IN 30 CFR PART 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: May 28, 1997.

Bob Armstrong, Assistant Secretary for Land and Minerals Management.

Accordingly, 30 CFR Part 870 is 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.

SECTION 870.17 -- [Suspended]

2. Section 870.17 is suspended.

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