

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: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (we or OSM) is revising its regulations governing Abandoned Mine Land (AML) reclamation fee reporting to allow for the electronic filing of the information required on the OSM-1 Form.

EFFECTIVE DATE: June 22, 2001.

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. Additional information concerning OSM and related documents may be found on OSM's Internet home page at www.osmre.gov under Financial Management.

SUPPLEMENTARY INFORMATION:

- I. Background Information.
- II. How Does This Final Rule Change Reporting Requirements?
- III. Procedural Matters and Certifications.

I. Background Information

Why Are We Publishing This Rule?

On October 21, 1998, the Government Paperwork Elimination Act (GPEA), Pub. L. 105-277, Title XVII, was signed into law. GPEA requires agencies, by October 21, 2003, to provide for (1) the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) the use and acceptance of electronic signatures, when practicable. GPEA § 1707 specifies that "[e]lectronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form."

In compliance with GPEA, we published a proposed rule on February

15, 2000 (65 FR 7706), which would allow a coal operator (or the entity reporting for the operator) the option of electronically filing information required by OSM's Abandoned Mine Land (AML) Reclamation Program.

What Is the 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 produced 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?

Sections 402(a) and (b) of SMCRA, 30 U.S.C. 1232(a) and (b), require companies to pay a reclamation fee on coal production 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.

What Options Were Considered for Electronic Filing?

The proposed rule published on February 15, 2000, contained rule language which would have revised our regulations to allow a coal operator (or the entity reporting for the operator) the option of filing the OSM-1 Form electronically. Because of the notary requirement in section 402(c) of SMCRA, the proposed rule also required the operator 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.

In order to further simplify the process and to make it easier for the operator to store records electronically, we reopened the comment period on January 22, 2001 (66 FR 6511) and presented additional options for consideration. In the reopening notice, we asked for comments on an option which would allow the operator to electronically submit the OSM-1 Form and include a statement made under penalty of perjury that the information contained in the form is true and correct. The statement would not have to be notarized but it would have to be electronically signed, dated, and transmitted to OSM as part of the OSM-1 Form.

In the reopening notice, we also solicited comments on whether we should issue a final rule which would provide the operator with two alternative electronic filing methods in addition to the existing paper process. The electronic filing methods would be the one contained in the proposed rule which requires the operator to maintain on file a properly notarized paper copy of the OSM-1 Form submitted electronically, or in the alternative, the electronic filing method contained in the reopening notice which requires the operator to submit an electronically

signed and dated statement made under penalty of perjury.

II. How Does This Final Rule Change Reporting Requirements?

No comments were received on either the proposed rule or on the reopening notice. Therefore, based on the options contained in the proposed rule and in the reopening notice, we are adopting a final rule which will allow the operator to: (1) Submit a properly notarized paper copy of the OSM-1 Form as is currently authorized by regulation, (2) submit the OSM-1 Form electronically while maintaining a properly notarized paper copy of the identical form, or (3) submit the OSM-1 Form electronically with an electronically signed and dated statement made under penalty of perjury that the information contained in the form is true and correct.

How Will the Electronic Submission Process Work?

Under current procedures, 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 have developed a computer-based electronic form that also contains the same information.

The computer-based electronic form may be accessed at the OSM website www.osmre.gov/finance.htm. Companies can log in and complete the OSM-1 Form on-line. Access to the website will be controlled by User ID and password which will be used as the method of electronic signature. When initially accessing the website, companies can down-load encryption software which is free. The data which is encrypted can be read only by the company and OSM and the data submitted by the company cannot be changed by unauthorized persons. A file transfer protocol (FTP) version of the electronic OSM-1 Form allows companies with a large number of reporting permits to automate their filing process by transferring their data report files directly from their computer to OSM. The FTP process uses a form of electronic signature called a Public Key Infrastructure (PKI). PKI is a system for encrypting, decrypting, signing and verifying the data transferred electronically. With PKI, the company (user) can obtain a free download of the software for a private signing key. With this key, the user creates a digital signature on an electronic file or encrypts the data. OSM, as the recipient

of the file, employs the public key to validate the signature made with the private key or decrypts the data. The two keys are mathematically linked and form a unique pair. Only the public key can validate the signature made with the associated private key(s). This process also verifies that the file has not been altered since its encryption. The companies that use FTP will also need a user identification and password which can be obtained from the OSM website at www.osmre.gov/finance.htm. This will enable them to print their OSM-1 report from the website after their data is transferred.

Section 870.17(b)—Partial Electronic Transmission

Under § 870.17(b), the operator (or entity reporting for the operator) only needs to access the electronic version of the OSM-1 Form, update changes, add missing information, and send it back to OSM. However, because of the notary requirement in section 402(c) of SMCRA, this method of filing also requires the operator to print out and maintain on file, a properly notarized paper copy of the identical OSM-1 Form for review by OSM's Fee Compliance auditors.

We had hoped to implement a system by which the operator could electronically transmit the OSM-1 Form as described above, and also electronically sign and notarize it prior to sending it to OSM. This would have eliminated the need to print out and maintain a properly notarized paper copy of the form. We determined, however, that while electronic notarization is legal, the majority of states have not enacted laws governing its use, and the infrastructure required to electronically notarize and transmit a document is not readily available nationwide. As the means to electronically notarize a document become readily available, we will review our regulations and process to determine whether there is a need to modify our system to accept electronic notarization.

Section 870.17(c)—Complete Electronic Transmission

Under § 870.17(c), the operator (or entity reporting for the operator) can electronically submit the OSM-1 Form and include a statement made under penalty of perjury that the information contained in the OSM-1 Form is true and correct. The statement does *not* have to be notarized but it does have to be electronically signed, dated, and transmitted to OSM as part of the OSM-1 Form.

The authority for filing the form without notarization is found in 28 U.S.C. 1746. Section 1746 provides in part:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

* * * * *

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

It was the intent of Congress in enacting the provisions of 28 U.S.C. 1746 to spare people the cost and inconvenience of notarizing a document. Its use in conjunction with the electronic filing of the OSM-1 Form allows us to further simplify the filing process for the operator. It also makes it possible for the operator to store records electronically since it is no longer necessary, as in the other two methods, to maintain on file, a properly notarized paper copy of the OSM-1 Form. Under GPEA § 1707, an electronic record of the OSM-1 Form with the unsworn statement made under penalty of perjury is sufficient.

When Can I Start To File the OSM-1 Form Electronically?

This rule is effective on June 22, 2001. We will accept electronic filings of the OSM-1 form after that date.

III. Procedural Matters and Certifications

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 will 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 is expected to 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 is an option available to industry and it 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 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 rule does not have Federalism implications. It will 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 rule will 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 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.

List of Subjects in 30 CFR Part 870

Incorporation by reference, Reporting and record keeping requirements, Surface mining, Underground mining.

Dated: May 16, 2001.

Piet de Witt,

Acting Assistant Secretary for Land and Minerals Management.

For the reasons set forth in the preamble, 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 is revised to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105-277.

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.

* * * * *

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. * * *

* * * * *

(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.

* * * * *

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 use a methodology and medium approved by OSM, and do one of the following:

(a) 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.); or

(b) Submit an electronically signed and dated statement made under penalty of perjury that the information

contained in the OSM-1 Form is true and correct.

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