ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for a proposed rule that appeared in the **Federal Register** of February 19, 1997 (62 FR 7390). The comment period is being opened for 14 days to accept additional comments on the agency's proposal to grant exemptions from preemption for certain cigarette and smokeless tobacco requirements in the States of Alabama, Alaska, and Utah.

DATES: Written comments must be received or postmarked by July 7, 1997. Comments postmarked after such date will not be considered.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5321.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44396), FDA published a final rule (the tobacco rule) restricting the sale and distribution of nicotine-containing cigarettes and smokeless tobacco in order to protect children and adolescents. Because FDA is regulating these products as nicotine-delivery devices under the Federal Food, Drug, and Cosmetic Act (the act), any State or local requirement that is different from, or in addition to, specific requirements for cigarettes or smokeless tobacco under the tobacco rule is preempted under section 521(a) of the act (21 U.S.C. 360k). Section 521(b) of the act provides that FDA may, upon application by a State or political subdivision, and by regulation issued after notice and opportunity for an oral hearing, exempt a State or local device requirement from Federal preemption.

In the **Federal Register** of February 19, 1997 (62 FR 7390), FDA issued a proposed rule that would grant exemption from Federal preemption for certain cigarette and smokeless tobacco requirements in the States of Alabama, Alaska, and Utah.The proposed rule would allow those States to enforce State requirements that are more stringent than FDA counterpart requirements. FDA received approximately one dozen comments to the proposal and one requested that FDA extend the comment period for 14 days.

The request stated that an extension was necessary because the comment stated that the scope of preemption under section 521(a) of the act was explained differently in the tobacco rule than it was in the proposal (62 FR 7390). In order to ensure that all interested parties have a fair opportunity to comment, FDA is extending the comment period for 14 days. Comments must be either received or postmarked by July 7, 1997 in order to be considered. The agency intends to issue a final rule as soon after the comment period closes as is practicable.

Interest persons may, on or before July 7, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–16309 Filed 6–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029–AB68

Abandoned Mine Land Reclamation Fund—Basis for Coal Weight Determination; Notice of Withdrawal

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

ACTION: Proposed rule; notice of withdrawal.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is withdrawing the proposed rule published on December 29, 1992 (57 FR 62116), regarding the determination of coal weight for calculating Abandoned Mine Land (AML) reclamation fees. That proposal was intended to allow operators who transfer run-of-mine coal but are paid on a calculated clean coal basis to also pay their AML fees on that basis. In lieu of rulemaking, OSM will recognize such transactions and allow fees to be paid on the calculated clean basis in certain circumstances, within the scope of the existing regulations. This approach will provide us greater latitude in determining the tonnage on which the first sale or transfer of ownership is based.

DATES: This notice is effective June 23, 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

Section 402(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *se seq.*, requires all operators of coal mining operations subject to its provisions to pay a reclamation fee on each ton of coal produced. In December 1977 OSM first promulgated regulations to implement this provision (42 FR 62714; Sec. 13, 1977). The regulations base the fee on the actual gross weight of the coal at the first sale, use, or transfer of ownership. This regulation has been in effect basically unchanged since that time.

In 1982 (47 FR 28593; June 30, 1982) we revised the regulatory language to clarify the point in time of fee determination and to stress value and weight parameters for fee calculation purposes. We added at that time 30 CFR 870.129b) (1), (2), and (3) stating that these provisions merely restate our policy since the initial implementation of the fee collection program. The preamble to the regulations, however, did not specifically discuss these three provisions.

Of importance to OSM's decision to withdraw the proposed rule are existing sections 870.12(b)(3) (ii) and (iii) providing:

> (ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.
>
> (iii) Insufficient records shall subject the operator to fees based on raw coal tonnage data.

Operators and OSM personnel now interpret these provisions as authorizing OSM to allow operators to pay reclamation fees on a clean coal tonnage basis if that is the basis of the first transaction and sale. Many small operators are paid on a clean coal basis by purchasers when they deliver their run-of-mine coals to preparation plants.

Accordingly, the operators maintain that OSM should allow them to pay the AML fee based on the actual per ton payment they receive. They argue that section 870.12(b)(3) (ii) and (iii) authorizes AML fee payments in this fashion. The operators say that they should not have to pay on the higher raw coal tonnage figures unless they do not keep records sufficient to document the basis of the payment they receive on clean coal tonnage.

In 1991, OSM commenced a review of the rule's application (Notice of Inquiry; 56 FR 10404; March 12, 1991). Upon examination of the comments received, OSM found merit in the position advocated by the coal producers. OSM had deferred billing amounts that would be due on the higher raw coal tonnage figure pending resolution of the issue.

To address the matter, OSM proposed a rule revision on December 29, 1992 (57 FR 62116), allowing payment on a calculated clean tonnage basis if and when the coal was sold to a preparation plant for cleaning. The preparation plant owner would have assumed some responsibility for paying AML fees. That rule, however, was never finalized and is being withdrawn by this notice.

II. Reason for Agency Action

In examining the public comments, our regulations, and past agency practice with regard to their implementation, it is evident that we have allowed operators to use calculations and other records to substantiate their AML fee liability where necessary and reasonable. For example, in section 870.12(c), if underground and surface mine coal are mixed prior to the first sale or use, this regulation provides that the higher surface rate must be used unless the operator can demonstrate by ''acceptable engineering calculations or other reports'' the amount of coal attributed to surface mining.

Based upon these findings, we believe sections 870.12(b)(3) (ii) and (iii) allow an operator to pay on a clean coal tonnage basis if the operator transfers run-of-mine tonnage to an unrelated second party who cleans the coal, and the operator is paid on only the clean coal tonnage. The difference in the tonnage amounts must be attributed to materials extraneous to the coal removed in the cleaning process, such as dirt and clay, and not to impurities inherent in the coal. This action is designed to address and accommodate a common business practice among small coal operators in a segment of the industry, and does not authorize operators to make arbitrary reductions in the tonnage to be reported. We expect that the majority of the coal tonnage will continue to be reported based on the actual weight at the time of initial sale, transfer, or use as the regulations require. The following scenarios are provided to illustrate the rule's application:

Example 1: An operator delivers 100 tons of coal to a preparation plant owner who determines through accepted standard industry analysis that only 90 tons of coal will be recovered after cleaning. The preparation plant owner pays the operator for 90 tons. The operator is liable for fees on 90 tons because that is the basis on which he was paid.

Example 2: An operator delivers 100 tons of coal to a preparation plant owner who pays the operator for 100 tons. The operator determines that the coal if cleaned would have a reject factor of 10 percent and therefore pays fees on only 90 tons. This would be incorrect and disallowed. The operator should pay fees on 100 tons because that is the basis on which he was paid by the preparation plant owner.

Example 3: An operator delivers 100 tons of coal to a preparation plant owner who determines through accepted standard industry analysis that only 90 tons will be recovered after cleaning. The preparation plant owner pays the operator for only 90 tons. The operator determines that the coal contains 5 tons of ash and therefore pays fees on 85 tons (90 tons of clean coal minus 5 tons of ash). This would be incorrect and disallowed. The operator must pay on the tonnage for which he was paid. No deductions are allowed for matter that is intrinsic to the coal. The correct tonnage for calculating fee payment would be 90 tons.

We believe that basic market forces coupled with proper recordkeeping and review will ensure the integrity of the reclamation fee collection process. A regulatory change is therefore considered unnecessary at this time.

We would point out that the ability to pay on a clean coal basis, however, is predicted on the operator maintaining the proper records. Failure to maintain these records, as specified in 30 CFR 870.12(b)(3)(ii) and 30 CFR 870.16, would result in a fee assessment based on raw coal tonnage figures.

We recognize that a small number of companies have paid fees on raw tonnage amounts even though the sales transaction was based on a clean coal tonnage figure. We will move swiftly to correct inconsistencies that have occurred in the past, provided that any claims for refunds are in accord with the limitations proscribed by 28 U.S.C. 2401(a) (statute of limitations) and the necessary records are available to substantiate them.

If you have questions concerning this notice, please contact Jim Krawchyk at the address and telephone number listed above under **FOR FURTHER INFORMATION.** If necessary, we will arrange for an audit of the company's reclamation fee payments.

Dated: May 9, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–16304 Filed 6–20–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–077–FOR]

West Virginia Permanent Regulatory Program

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

ACTION: Proposed Rule, correction.

SUMMARY: OSM is correcting an error in the closing date of the public comment period as stated in the proposed rule announcing a West Virginia program amendment published on June 10, 1997 (62 FR 31543).

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

In the proposed rule published on June 10, 1997 (FR Doc. 97–15008), OSM is correcting the information listed on page 31543 under **DATES** to read as follows:

DATES: Written comments must be received by 4:00 p.m., July 10, 1997. If requested, a public hearing on the proposed amendment will be held on July 9, 1997. Requests to speak at the hearing must be received by 4:00 p.m., on June 25, 1997.

Dated: June 16, 1997.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–16331 Filed 6–20–97; 8:45 am]

BILLING CODE 4310–05–M