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November 26, 2008

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Nick J. Rahall II
Chairman
The Honorable Don Young
Ranking Minority Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Office of Surface Mining Reclamation and Enforcement: Abandoned Mine Land Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSM), entitled “Abandoned Mine Land Program” (RIN: 1029-AC56). We received the rule on November 13, 2008. It was published in the *Federal Register* as a final rule on November 14, 2008. 73 Fed. Reg. 67,576.

The final rule revises regulations for the Abandoned Mine Reclamation Fund (Fund) and the Abandoned Mine Land (AML) program. The final rule reflects the statutory change extending OSM’s reclamation fee authority through September 30, 2021. The final rule also implements changes to the AML program’s allocation formula and distributions.

Enclosed is our assessment of the OSM’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that OSM complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Brent Wahlquist
Director
Office of Surface Mining
Reclamation and Enforcement
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
ENTITLED
"ABANDONED MINE LAND PROGRAM"
(RIN: 1029-AC56)

(i) Cost-benefit analysis

OSM estimated that the costs associated with the final rule would total \$6.9 billion, as compared to costs of \$612 million if no changes were made. Without the final rule, the total costs to operators for fees paid from October 1, 2007, through September 30, 2021 would be \$612 million, and there would be no other costs associated with the rule. Under the final rule, the total costs to operators for fees paid from October 1, 2007, through September 30, 2021, would be \$4.1 billion. The final rule also has \$2.8 billion in estimated costs to the federal Treasury, including money from the general fund of the Treasury that OSM is required to transfer to certified and uncertified states and Indian tribes for their share of the prior unappropriated balance, and Treasury funds that are transferred to certified states and tribes as in lieu funds equal to 50 percent of fees collected on coal produced in their state or on tribal lands.

OSM estimated that the quantifiable benefits associated with the final rule would be \$6 billion in available funds for reclamation, as compared to \$2.1 billion if no changes were made. Without the final rule, \$2.1 billion would be available for reclamation, but approximately 52,442 acres of Priority 1 and Priority 2 coal sites would be left unreclaimed. Under the final rule, approximately \$6 billion would be available for reclamation, which would be sufficient to reclaim all Priority 1 and Priority 2 sites and leave additional remaining funds for reclamation at Priority 3 sites or for other uses. In addition to the quantifiable benefits, OSM cites to the unquantifiable benefits, such as reduction or elimination in health and safety problems and in adverse environmental effects, improved habitat for fish and wildlife, increased employment opportunities for those employed by reclamation projects, increase in the number of potential land uses at these sites, and general increase in quality of life in nearby communities and adjacent property values.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Department of the Interior certified that the final rule would not have a significant economic impact on a substantial number of small entities under the Act.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector or more than \$100 million per year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

OSM notified all fee payers in writing of the fee rate changes in January and September of 2007. OSM also met with representatives of states and Indian tribes with approved reclamation programs at meetings hosted by the Interstate Mining Compact Commission and the National Association of Abandoned Mine Land Programs in January, February, and May 2007. OSM published a notice of proposed rulemaking in the *Federal Register* on June 20, 2008. 73 Fed. Reg. 35,214. OSM received approximately 51 comments on the proposed rule and responds to those comments in the final rule. 73 Fed. Reg. 67,576.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The information collection requirements in the final rule have been approved by the Office of Management and Budget (OMB) and assigned a control number. OSM estimates that the applicant burden is 5.3 hours, and the burden for state regulatory authorities is 3.4 hours per response.

Statutory authorization for the rule

The final rule is authorized by Title IV of the Surface Mining Control and Reclamation Act of 1977, as amended by the Surface Mining Control and Reclamation Act Amendments of 2006, Title II of Division C of Pub. L. 109-432, 120 Stat. 3006 (2006).

Executive Order No. 12,866

The final rule is an economically significant rule under the Order and was reviewed by OMB. OSM prepared a cost benefit analysis as required by the Order.

Executive Order No. 13,132 (Federalism)

OSM determined that the final rule does not have sufficient federalism implications to warrant the preparation of an assessment under the Order. OSM also determined that the rule does not preempt state law or impose substantial direct compliance costs on state and local governments.