

## SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

## PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Sec.

- 870.1 Scope.
- 870.5 Definitions.
- 870.10 Information collection.
- 870.11 Applicability.
- 870.12 Reclamation fee.
- 870.13 Fee computations.
- 870.14 Determination of percentage-based fees.
- 870.15 Reclamation fee payment.
- 870.16 Production records.
- 870.17 Compliance authority.
- 870.18 Excess moisture content allowance.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended.

SOURCE: 47 FR 28593, June 30, 1982, unless otherwise noted.

**§ 870.1 Scope.**

This part sets out the procedures for the collection of fees for the Abandoned Mine Reclamation Fund.

**§ 870.5 Definitions.**

As used in part 870 through 888 of this subchapter—

*Abandoned Mine Reclamation Fund* or *Fund* means a special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

*Agency* means the State agency designated by the Governor, or in the case of Indian tribes, the Tribal agency designated by the equivalent head of an Indian tribe, to administer the State/Indian tribe reclamation program and to receive and administer grants under this part.

*Allocate* means the administrative identification in the records of OSM of moneys in the fund for a specific purpose, e.g., identification of moneys for exclusive use by a State.

*Anthracite, bituminous and subbituminous coal* means all coals other than lignite coal.

*Calendar quarter* means a 3-month period within a calendar year. The first

calendar quarter begins on January 1 of the calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

*Eligible lands and water* means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. Provided, however, that lands and water damaged by coal mining operations after that date and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in 30 CFR 874.12 (d) and (e). Following certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified in 30 CFR 874.14. For additional eligibility requirements for water projects, see 30 CFR 874.14, and for lands affected by remining operations, see Section 404 of the Act.

*Emergency* means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

*Excess moisture* means moisture determined to be the difference between total moisture and inherent moisture.

*Expended* means that moneys have been obligated, encumbered, or committed for reclamation by contract by the OSM, State, or Tribe for work to be accomplished or services to be rendered.

*Extreme danger* means a condition that could reasonably be expected to

cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

*Fee compliance officer* means any person authorized by the Secretary to exercise authority in matters relating to this part.

*In situ coal mining* means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining, and fluid recovery mining. At this time, part 870 considers only in situ gasification.

*Indian Abandoned Mine Reclamation Fund* or *Indian Fund* means a separate fund established by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

*Indian reclamation program* means a program established by an Indian tribe in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

*Inherent moisture* means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but not that present in macroscopically visible fractures.

*Left or abandoned in either an unreclaimed or inadequately reclaimed condition* means lands and water:

(a) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977 and November 5, 1990, as authorized pursuant to Section 402(g)(4) of the Act, and on which all mining has ceased;

(b) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State

or Federal Laws, except as provided in Sections 402(g)(4) and 403(b)(2) of the Act.

*Lignite coal* means consolidated lignite coal having less than 8,300 British thermal units per pound, moist and mineral-matter-free. Moist, mineral-matter free British thermal units per pound are determined by Parr's formula, equation 3, on page 222 of "Standard Specification for Classification of Coals by Rank," in American Society for Testing and Materials ASTM D 388-77 (Philadelphia, 1977). Parr's formula follows:

$$\text{Moist, Mn-Free Btu} = \frac{(\text{Bu} - 50\text{S})}{[100 - (1.08\text{A} + 0.55\text{S})]} \times 100$$

where:

Mn=Mineral matter

Btu=British thermal units per pound (calorific value)

A=percentage of ash, and

S=percentage of sulfur

"Moist" refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

*Mineral owner* means any person or entity owning 10 percent or more of the mineral estate for a permit. If no single mineral owner meets the 10 percent rule, then the largest single mineral owner shall be considered to be the mineral owner. If there are several persons who have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

*OSM* means the Office of Surface Mining Reclamation and Enforcement.

*Permanent facility* means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

*Project* means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

*Qualified hydrologic unit* means a hydrologic unit:

(a) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(b) That contains lands and waters which are:

(1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a); or

(2) Proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage.

*Reclaimed coal* means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.

*Reclamation activity* means the reclamation, abatement, control, or prevention of adverse effects of past mining.

*Reclamation plan* means a plan submitted and approved under part 884 of this chapter.

*State Abandoned Mine Reclamation Fund* or *State Fund* means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

*State reclamation program* means a program established by a State in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

*Surface coal mining* means the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and includes auger coal mining. For purposes of subchapter R, reclaiming coal operations are considered surface coal mining.

*Ton* means 2,000 pounds avoirdupois (0.90718 metric ton).

*Total moisture* means the moisture determined as the loss in weight in an air atmosphere under rigidly controlled conditions of temperature, time and air flow.

*Underground coal mining* means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

*Value* means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28168, May 31, 1994; 60 FR 9980, Feb. 22, 1995]

EFFECTIVE DATE NOTE: At 59 FR 60318, Nov. 23, 1994, in §870.5, the definition of *Qualified hydrologic unit* was suspended in so far as it does not require a hydrologic unit to be both:

(1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a), and

(2) Proposed to be the subject of expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage in order to be considered a qualified hydrologic unit.

#### § 870.10 Information collection.

The collections of information contained in part 870 and the Form OSM-1 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1029-0090 and 1029-0063 respectively. The information will be used by the Office of Surface Mining Reclamation and Enforcement to determine whether coal mine operators are reporting accurate production figures and paying proper fees. Response is mandatory in accordance with Public Law 95-87. Public reporting burden for this collection of information is estimated to average 2 hours (1029-0090) and 16 minutes (1029-0063) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden

estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029-0063) or (1029-0090), Washington, DC 20503.

[59 FR 28169, May 31, 1994]

**§ 870.11 Applicability.**

The regulations in this part apply to all surface and underground coal mining operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal for commercial purposes by surface coal mining operations which affects two acres or less during the life of the mine;

(c) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$  percent of the total tonnage of coal and other minerals removed for commercial use or sale

(1) In accordance with part 702 of this chapter for Federal program States and on Indian lands or

(2) In any twelve consecutive months in a State with an approved State program until counterpart regulations pursuant to part 702 of this chapter have been incorporated into the State program and in accordance with such counterpart regulations, thereafter; and

(e) The extraction of less than 250 tons of coal within twelve consecutive months.

[47 FR 28593, June 30, 1982, as amended at 54 FR 52123, Dec. 20, 1989; 54 FR 52123, Dec. 20, 1989]

EFFECTIVE DATE NOTE: At 52 FR 21229, June 4, 1987, in § 870.11 paragraph (b) was suspended insofar as it excepts from the applicability of 30 CFR part 870:

(1) Any surface coal mining operations commencing on or after June 6, 1987; and

(2) Any surface coal mining operations conducted on or after November 8, 1987.

**§ 870.12 Reclamation fee.**

(a) The operator shall pay a reclamation fee on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator, excluding excess moisture for which a reduction has been taken pursuant to § 870.18, shall not be deducted from the gross weight.

(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 tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by surface mining by acceptable engineering calculations or other reports which the Director may require.

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977, and ending September 30, 2004.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28169, May 31, 1994]

**§ 870.13 Fee computations.**

(a) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than \$3.50 per ton, in

which case the fee is 10 percent of the value.

(b) *Underground mining fees.* The fee for anthracite, bituminous, and sub-bituminous coal is 15 cents per ton unless the value of such coal is less than \$1.50 per ton, in which case the fee is 10 percent of the value.

(c) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than \$5.00 per ton, in which case the fee charged is 2 percent of the value.

(d) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

**§ 870.14 Determination of percentage-based fees.**

(a) If the operator submits a fee based on a percentage of the value of coal, the operator shall include, with his fee and production report, documentation supporting the alleged coal value. Based on this information and any additional documentation; including examination of the operator's books and records, that the Director may require, the Director may accept the valuation submitted by the operator, or may otherwise determine the value of the coal.

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under § 870.15(c).

**§ 870.15 Reclamation fee payment.**

(a) Each operator shall pay the reclamation fee based on calendar quarter tonnage no later than thirty days after the end of each calendar quarter.

(b) Each operator shall use mine report Form OSM-1 (or any approved successor form) to report tonnage of coal sold, used or transferred, as well as 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. If no single mineral owner or purchaser meets the 10 percent rule, then the largest single mineral owner and purchaser shall be reported. If several persons have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal. At the time of reporting, a submitter may designate such information as confidential.

(c) As of April 1, 1983, delinquent reclamation fee payments are subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Fiscal Requirements Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the Notices section of the FEDERAL REGISTER. Interest on unpaid reclamation fees shall begin to accrue on the 31st day following the end of the calendar quarter for which the fee payment is owed and will run until the date of payment. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All operators who receive a Coal Sales and Reclamation Fee Report (Form OSM-1), including those with zero sales, uses, or transfers, must submit a completed Form OSM-1, as well as any fee payment due. Fee payments postmarked later than thirty days after the calendar quarter for which the fee was owed will be subject to interest.

(d)(1) An operator who owes total quarterly reclamation fees of \$25,000 or more for one or more mines shall:

(i) Use an electronic fund transfer mechanism approved by the U.S. Department of the Treasury;

(ii) Forward its payments by electronic transfer;

(iii) Include the applicable Master Entity No.(s) (Part 1—Block 4 on the

OSM-1 form), and OSM Document No.(s) (Part 1—upper right corner of the OSM-1 form) on the wire message; and

(iv) Use OSM's approved 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.

(2) An operator who owes less than \$25,000 in quarterly reclamation fees for one or more mines may:

(i) Forward payments by electronic transfer in accordance with the procedures specified in paragraph (d)(1) of this section; or

(ii) Submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement, in the same envelope with OSM's approved form to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 360095M, Pittsburgh, Pennsylvania 15251.

(3) An operator who submits a payment of more than \$25,000 by a method other than an electronic fund transfer mechanism approved by the U.S. Department of the Treasury shall be in violation of the Surface Mining Control and Reclamation Act of 1977, as amended.

(e) Failure to pay overdue reclamation fees, including interest on late payments or underpayments, failure to maintain adequate records, or failure to provide access to records of a surface coal mining operation may result in one or more of the following actions: (1) Initiation of litigation; (2) reporting to the Internal Revenue Service; (3) reporting to State agencies responsible for taxation; (4) reporting to credit bureaus; or (5) referral to collection agencies. Such remedies are not exclusive.

(f) When a reclamation fee debt is greater than 91 days overdue, a 6 percent per annum penalty shall begin to accrue on the amount owed for fees and will run until the date of payment. This penalty is in addition to the interest described in paragraph (c) of this section.

(g)(1) For all delinquent fees, interest and any penalties, the debtor will be required to pay a processing and handling charge which shall be based upon the following components:

(i) For debts referred to a collection agency, the amount charged to OSM by the collection agency;

(ii) For debts processed and handled by OSM, a standard amount set annually by OSM based upon similar charges by collection agencies for debt collection;

(iii) For debts referred to the Solicitor, Department of the Interior, but paid prior to litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(iv) For debts referred to the Solicitor, Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(v) If not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(2) No prejudgment interest accrues on any processing and handling charges.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; Pub. L. 97-365, 5 U.S.C. 5514 *et seq.*)

[47 FR 28593, June 30, 1982, as amended at 48 FR 11100, Mar. 15, 1983; 49 FR 27499, July 5, 1984; 59 FR 14479, Mar. 28, 1994; 59 FR 28169, May 31, 1994]

#### § 870.16 Production records.

(a) Any person engaging in or conducting a surface coal mining operation shall maintain, on a current basis, records that contain at least the following information:

(1) Tons of coal produced, bought, sold or transferred, amount received per ton, name of person to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator and date of consumption.

(3) Tons of coal stockpiled or inventoried which are not classified as sold for fee computation purposes under § 870.12.

(4) For in situ coal mining operations, total BTU value of gas produced, the BTU value of a ton of coal in place certified at least semiannually by an independent laboratory, and the amount received for gas sold, transferred, or used.

(b) OSM fee compliance officers and other authorized representatives shall

have access to records of any surface coal mining operation for the purpose of determining compliance of that or any other such operation with this part.

(c) Any person engaging in or conducting a surface coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by OSM fee compliance officers. If the fee is paid at the maximum rate, the fee compliance officers shall not copy information relative to price. All copied information shall be protected to the extent authorized or required by the Privacy Act and the Freedom of Information Act (5 U.S.C. 552 (a), (b)).

(d) Any persons engaging in or conducting a surface coal mining operation shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e)(1) If an operator of a surface coal mining operation fails to maintain or make available the records as required in this section, OSM shall make an estimate of fee liability under this part through use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due, plus a 20 percent upward adjustment for possible error.

(2) Following an OSM estimate of fee liability, an operator may request OSM to revise the estimate based upon information provided by the operator. The operator has the burden of demonstrating that the estimate is incorrect by providing documentation acceptable to OSM, and comparable to information required in § 870.16(a).

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; Pub. L. 97-365, 5 U.S.C. 5514 *et seq.*)

[49 FR 27500, July 5, 1984]

#### § 870.17 Compliance authority.

The Secretary or any duly designated officer, employee, or representative of the Secretary may conduct such audits of coal sales, transfers, and use, and the payment of AML fees as may be necessary to ensure compliance with the provisions of the Act, and for such purposes shall, at all reasonable times,

upon request, have access to, and may copy, all books, papers, and other documents of any person involved in a coal transaction, including without limitation, permittees, operators, brokers, purchasers, and persons operating preparation plants and tipples, and any recipients of royalty payments for the coal.

[59 FR 28169, May 31, 1994]

EFFECTIVE DATE NOTE: At 62 FR 30232, June 3, 1997, § 870.17 was suspended.

#### § 870.18 Excess moisture content allowance.

For coal produced on or after July 1, 1988, the operator may take a calculated weight reduction to allow for the weight of excess moisture in the coal, subject to the following requirements:

(a) The operator shall demonstrate through competent evidence that there is a reasonable basis for determining the existence and amount of excess moisture. Documentation shall be updated as necessary to establish the continuing validity of the excess moisture content allowance taken by the operator.

(b) Inherent and total moisture shall be tested using standard laboratory analyses.

(c) The operator shall test for variations in inherent moisture amounts for different seams of coal produced which are blended prior to the initial bona fide sale, transfer of ownership, or use of the coal by the operator.

(d) The operator shall retain the results of all laboratory analyses and all other relevant documentation (including the operator's books and records) for not less than six years after the date of each analysis.

(e) If the Office disallows all or part of the allowance, the operator shall submit the additional fee, together with interest computed under § 870.15(c).

[53 FR 19726, May 27, 1988]

### PART 872—ABANDONED MINE RECLAMATION FUNDS

Sec.

872.1 Scope.

872.10 Information collection.