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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 accure 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]

§ 870.18 General rules for calculating excess moisture.

If you are an operator who mined coal after June 1988, you may deduct the weight of excess moisture in the coal to determine reclamation fees you owe under 30 CFR 870.12(b)(3)(i). Excess moisture is the difference between total moisture and inherent moisture. To calculate excess moisture in HIGH-rank coal, follow § 870.19. To calculate excess moisture in LOW-rank coal, follow § 870.20. Report your calculations on the OSM–1 form, Coal Reclamation Fee Report, for every calendar quarter in which you claim a deduction. Some cautions:

(a) You or your customer may do any test required by §§ 870.19 and 870.20. But whoever does a test, you are to keep test results and all related records for at least six years after the test date.

(b) If OSM disallows any or all of an allowance for excess moisture, you must submit an additional fee plus interest computed according to § 870.15(c) and penalties computed according to § 870.15(f).

(c) The following definitions are applicable to §§ 870.19 and 870.20. ASTM standards D4596–93, *Standard Practice for Collection of Channel Samples of Coal in a Mine;* D5192–91, *Standard Practice for Collection of Coal Samples from Core;* and, D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken,