

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 870**

RIN 1029-AB78

**Coal Moisture**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.  
**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend its regulations governing how the excess moisture allowance is determined for reclamation fee purposes. This action will define terms and phrases related to the collection and testing of coal samples used to determine the inherent and total moisture of coal; identify acceptable American Society for Testing and Materials (ASTM) standard sampling and testing methods for high and low-rank coals; prescribe frequencies for collecting and testing coal samples; and provide the coal industry with formulas for use in calculating an excess moisture tonnage allowance for the purpose of reducing the weight of coal subject to the abandoned mine land reclamation fee.

The proposed regulatory revision is necessary to clarify and simplify technical guidance for all users, and to provide the coal industry with standard criteria for calculating an excess moisture allowance on all coals subject to reclamation fee payment. The intended effect of this proposal is to enhance compliance with the provisions of section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the ACT). Operator use of the prescribed criteria will ensure that all tonnage reductions for excess moisture are taken on the same basis.

**DATES:** Written comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on February 3, 1997.

**Public Hearings:** OSM will accept requests for public hearings until 5 p.m. Eastern time on January 2, 1997.

**ADDRESSES:** Written comments: Hand-deliver or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 120, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Comments may also be sent through the Internet to OSM's Administrative Record, Internet address: OSMRules@OSMRE.GOV. Copies of any messages received electronically will be filed with the Administrative Record.

Request for public hearings: Submit requests to Dr. Kewal Kohli, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 9 Parkway Center, Pittsburgh, PA 15220, telephone (412) 937-2175.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kewal Kohli, telephone (412) 937-2175.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rules
- IV. Procedural Matters

**I. Public Comment Procedures***Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to addresses other than those listed above (see **ADDRESSES**), may not be considered or included in the Administrative Record for the final rule.

*Public Hearings*

OSM will hold public hearings on the proposed rule by request only. The times, dates, and addresses for all hearings will be announced in the Federal Register at least 7 days prior to any hearings which are to be held. Upon request, OSM will hold a public hearing on the proposed rule in Washington, D.C. and in the State of Colorado. Individuals wishing to attend, but not testify at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that the hearing will be held, should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Any person interested in participating at a hearing at a particular location, or any disabled individual who requires special accommodation to attend a public hearing, should inform Dr. Kohli (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing of the desired hearing location by 5 p.m. Eastern time on January 2, 1997. If no one has contacted Dr. Kohli to express an interest in participating in a hearing at a given location by that date the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have

been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber a written copy of their testimony.

To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of their testimony.

**II. Background**

Section 402(a) of the SMCRA 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 provisions (42 FR 62714, December 13, 1977). Briefly, the regulations require that the Abandoned Mine Land (AML) fees must be paid on the actual gross weight of the coal, at the time of the first transaction (sale, transfer of ownership, or use) involving the coal. This regulation has been in effect basically unchanged since 1977. In 1982, OSM revised the regulatory language to clarify the point in time of fee determination and to stress that the actual gross weight of the coal must be used for fee calculation. At that time OSM also specifically noted that no fees were owed on impurities physically removed before the sale, transfer of possession or use. In 1988, OSM again revised this regulation to allow an operator who mined coal after July 1, 1988, to elect to take an allowance for moisture contained in the coal at the time of sale that is determined to be in excess of the inherent, or natural bed moisture, in the coal.

Initially, OSM adopted the excess moisture allowance to address an inconsistency in the methods of determining coal weight under various Federal taxation requirements. At the time OSM proposed to amend its regulation to allow a deduction for excess moisture, the ASTM Committee on Coal and Coke, whose membership included representatives of the Internal Revenue Service (IRS) and OSM, was conducting a study to develop and/or confirm precision statements for the ASTM standard test method used to estimate the bed moisture in high-rank coals, ASTM D1412-85, as it applied to coals of all ranks. In a letter of November 18, 1987, the IRS submitted the following comment in response to the OSM proposal, "the results of the ASTM or a similar study should be received before one test is prescribed for use by all taxpayers."

As an interim measure, until adequate and fully reliable testing procedures became available for coals of all ranks, OSM's 1988 adopted regulation incorporated a suggestion made by the IRS. OSM decided to rely on a facts and circumstances test to allow an operator to elect to take an allowance for excess moisture provided the operator could demonstrate, through competent evidence, that there was a reasonable basis for determining the existence and amount of excess moisture. OSM's standard of reasonableness required an operator to provide sufficient documentation to sustain the weight reduction. Although no specific time periods were prescribed for testing, an operator was also required to prove that time frames chosen to measure the existence and amount of excess moisture were reasonable.

The preamble to the 1988 rule discussed OSM's willingness to accept the standard ASTM test methods to determine inherent moisture, ASTM D1412-85, and total moisture, ASTM D3302-82, pending the availability of more suitable alternatives. OSM recognized that these tests were not always reliable for this purpose and acknowledged its willingness to accept other testing methods for some sub-bituminous and lignite coals. OSM also stated its intent to develop technical guidance to assist operators and to assure uniform application of the excess moisture allowance throughout the industry.

As a result of the 1988 regulatory revision, under both OSM's regulatory requirements, and the IRS Ruling (86-96), an operator may claim a reduction in coal subject to reclamation fees, and a reduction in coal subject to the black lung tax, by estimating the excess moisture contained in the coal. OSM has notified the IRS of its intent to propose a revision to its current regulation, and will continue to consult with the IRS throughout this rulemaking process.

The final rule which OSM adopted in 1988, at 30 CFR § 870.12, allows an operator to elect to reduce the weight of coal tonnage subject to reclamation fee payment by a percentage of excess moisture estimated to be contained in the coal at the time of fee assessment. OSM defines the term "excess moisture" as the difference between "total moisture" and "inherent moisture." The ASTM definitions are used for the terms "total moisture" and "inherent moisture," at 30 CFR § 870.5.

Standard laboratory test methods must be used to determine the estimated amount of excess moisture contained in the coal that is used as the basis for an

excess moisture allowance. The excess moisture contained in mined coal must be found by collecting a coal sample and testing the sample to determine a percentage of inherent moisture estimated to be in the undisturbed coal as it lies in the seam. The operator must also collect and test coal at the shipping point to find the estimated total moisture percentage in as-shipped coal. The percentage of excess moisture that may be deducted from the weight of the coal for fee payment purposes is then calculated by finding the difference between the total moisture percentage and the inherent moisture percentage.

OSM has issued five AML Payer Letters to provide technical guidance to the coal industry and assist with the application of this regulation. OSM has also published this guidance in the OSM Payer Handbooks. The first AML Payer Letter, issued on June 16, 1988, provided for the operator to: Make an inventory of any coal mined prior to July 1, 1988, that was stockpiled, or otherwise stored on the mine site; use the ASTM D1412 test as the standard test method to determine the estimated percentage of inherent moisture; establish an accurate estimate of the coal seam's baseline inherent moisture by taking one inherent moisture test in each month of the first 24 months a coal seam is in continuous operation; and, take one annual inherent moisture test after completion of the baseline study period. The baseline can be based, in part, on information from existing sources such as the United States Geological Survey or the Department of Energy, provided the operator uses its own sampling and testing data to validate or update data obtained from these sources. An operator can use either ASTM Standard Test Method for Total Moisture in Coal, D3302, or ASTM Standard Practice for Proximate Analysis of Coal and Coke, test method D3172, to determine an estimated total moisture percentage. Total moisture is tested at the time of the initial bona fide sale, transfer of ownership, or use of the coal. Operators are advised to maintain a full description and rationale for any deviations from standard test methods, according to 30 CFR § 870.18(d).

The second AML Payer Letter, issued on September 28, 1988, provided ten different examples illustrating how to calculate an excess moisture allowance under various circumstances for coal that was either raw, clean, or blended. That Letter also provides instructions for completing the Coal Production and Reclamation Fee Report (Coal Reclamation Fee Report), Form OSM-1, to report the excess moisture allowance.

A third AML Payer Letter dated July 17, 1989, acknowledged that OSM would accept: Total moisture tests performed by the operator's customer, provided the operator maintains documentation to support the test results; and, moisture percentages accepted by another taxing authority only when the percentages were supported by actual test data. This Letter provided notice that OSM would not accept the use of a core sample to establish inherent moisture. The use of a weighted average in calculations, and the type of test documentation an operator would need to maintain are illustrated.

On September 14, 1990, OSM issued its fourth AML Payer Letter. This Letter consolidated and replaced the guidance in the three previous AML Payer letters on testing, completion of the Form OSM-1, and computing the excess moisture allowance under various scenarios. OSM also re-emphasized that total moisture should be determined for each day's shipments.

In an AML Payer Letter issued on July 15, 1993, OSM was able to expand its testing frequency guidelines for inherent moisture to include quarterly testing as an alternative to monthly testing. This came about as a result of research conducted by the OSM engineering staff on actual excess moisture allowances taken for more than 4 years. The AML Payer Letter advised operators that OSM would accept either quarterly inherent moisture estimates based on tests taken once in a quarter, or monthly tests. The ASTM had adopted the use of a corehole sample to test for inherent moisture. The AML Payer Letter informed the industry that OSM also accepts the use of corehole samples to test coal for inherent moisture. OSM advised the industry that it cannot accept residual moisture as inherent moisture because residual moisture and inherent moisture are not equal. This AML Payer Letter also informed the industry that OSM will provide notice when it proposes to adopt an alternative procedure that will more accurately establish inherent moisture in low-rank coal.

OSM's audits of excess moisture reduced tonnages find that operators frequently fail to conform to inherent moisture test procedures described in AML Payer Letters, and do not provide adequate support for procedures they do use. Some operators mining large volumes of low-rank coal base tonnage reductions on test data that is known to be unreliable.

In October 1992, OSM conducted its own independent sampling and testing program in Wyoming's Powder River

Basin to assess the reliability of existing ASTM methods and procedures for determining inherent moisture in low-rank coal. In March 1993, OSM met with operators in Gillette, Wyoming, to provide them with the results of its study and inform them that OSM was considering regulatory requirements for inherent moisture testing. This rulemaking proposes to adopt a new requirement for establishing inherent moisture in low rank coal based, in part, on the results of OSM's Powder River Basin sampling and testing program.

### III. Discussion of the Proposed Rules

At this time OSM is proposing to revise its regulations governing the excess moisture allowance to codify regulatory technical requirements to be met by an operator who elects to take an excess moisture allowance in either high- or low-rank coals. The proposal incorporates by reference ASTM standards used for collecting and testing a coal sample as specified in § 870.19(a), Table 1 and Table 2, and § 870.20(a), Tables 3, 4, and 5, as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. A copy of the ASTM standards is available for inspection at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 120, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., Washington, DC. The proposed rule establishes a frequency for using ASTM standard test methods on coals of all ranks, and adopts the method approved by the ASTM to establish inherent moisture in low-rank coal, the ASTM D1412-93, Appendix XI. Use of this procedure for low-rank coal would ensure excess moisture allowances taken on low-rank coals are on a comparable basis to those taken on high-rank coal, and all excess moisture allowances are fair and equitable. OSM's proposal also includes an option that would provide operators with a method to calculate an allowance for the inherent moisture present in as-shipped coal. This would be of particular benefit when an operator sells large volumes of coal, and/or sells coal with a substantial variance between the total and inherent moisture.

#### *Definitions—Section 870.5*

OSM would modify the existing definition for excess moisture by including, by reference, a formula for use in calculating excess moisture in high- and low-rank coals. The formula to be used for high-rank coals is found in a new § 870.19 and the formula for low-rank coals is in a new § 870.20. The

existing definition of inherent moisture would be expanded to incorporate by reference the specific ASTM sample collection methods and test procedures shown in § 870.19, Table 2, Calculating INHERENT moisture percentage in HIGH-rank coal, and § 870.20, Table 4, and Table 5, Calculating INHERENT moisture percentage in LOW-rank coal. The existing definition of total moisture would be expanded to incorporate by reference ASTM criteria in § 870.19, Table 1, for Calculating the TOTAL moisture percentage in HIGH-rank coal, and § 870.20, Table 3, for Calculating the TOTAL moisture percentage in LOW-rank coal. The expansion of the existing definitions to incorporate by reference specific ASTM sample collection methods and test procedures would provide precise technical standards to facilitate operator compliance with OSM's requirements, and to ensure that the same basis is used to calculate all excess moisture allowances.

#### *General Rules for Calculating Excess Moisture—Section 870.18*

OSM proposes to modify 30 CFR § 870.18, Excess moisture content allowance at § 870.18 (a), (b), and (c). Section 870.18(a) requires an operator to demonstrate through competent evidence that the basis for determining the existence and amount of excess moisture is reasonable. OSM requires documentation to be updated as needed to prove an excess moisture allowance taken by an operator continues to be valid. Section 870.18(b) requires standard laboratory analyses for testing inherent and total moisture. Section 870.18(c) requires an operator who blends coal mined from multiple seams prior to the initial sale, transfer or use of the coal to test for variations in the inherent moisture amounts from different seams.

This proposal would replace the reasonableness standard found at § 870.18(a), the generic laboratory test requirement at § 870.18(b), and the requirement for a separate test of coal from each seam mined prior to blending the coal for sale, transfer of ownership or use. OSM proposes a revision to the existing regulation that would recognize the distinct differences in high- and low-rank coals in new §§ 870.19 and 870.20. Section 870.19 proposes acceptable standards for collecting and testing a sample of high-rank coal to establish the percentage of inherent and total moisture contained in the coal, and calculate the excess moisture allowance. Section 870.20 proposes like standards for calculating the excess moisture allowance for low-rank coal.

Revised section 870.18(c) would add definitions to further explain the meaning of terms as they are used in new §§ 870.19 and 870.20. "As-shipped coal" and "tipple coal" is defined as the coal found at the mine or loading facility. A precise meaning for a "channel sample" and "core sample" is given and the definitions incorporate by reference the specific ASTM procedure used to take the particular kind of sample. The "correction factor" is added as the method used to establish the difference between the equilibrium moisture and inherent moisture in low-rank coal under § 870.20. "Equilibrium moisture" is defined as the method used to estimate the inherent moisture in all coals, and ASTM D1412 and ASTM D1412, Appendix XI, are incorporated by reference. Types of "high-rank coals" and "low-rank coals" are defined to explain how these terms are used throughout § 870.5 and §§ 870.18-20.

#### *How To Calculate Excess Moisture in HIGH-Rank Coal—Section 870.19*

A new § 870.19 would provide standard criteria for an operator to use to establish excess moisture in high-rank coal. Table 1 includes the ASTM standard sample collection method, ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample*; and test procedure, ASTM-D3302-91, *Standard Test Method for Total Moisture in Coal*, that OSM would accept for use as the basis for calculating the percentage of total moisture in as-shipped high-rank coal each day the coal is either shipped or used.

The daily total moisture test results would be converted to quarterly figures to be reported to OSM on the OSM-1 Coal Reclamation Fee Report. To calculate the quarterly total moisture percentage an operator would: (1) multiply the daily total moisture percentage by the tonnage shipped or used that day, to find the daily total moisture tonnage; and, (2) add the daily total moisture tonnage for each day in the quarter; and, (3) add the daily tonnage shipped or used in the quarter, to find the total tonnage shipped or used during the quarter. Then, divide the sum of the daily total moisture tonnage, step (2), by the sum of the daily tonnage shipped or used in the quarter, step (3). This will result in the total moisture percentage in high-rank coal for the quarter which would be reported on the OSM-1, Coal Reclamation Fee Report.

Table 2 provides three methods for sampling high-rank coal, and testing the sample to determine the inherent moisture percentage that would be acceptable to OSM. To collect a coal

sample directly from a coal seam an operator could use either a core or a channel sample method. If a core sample is collected the operator would be required to collect the sample using procedures in ASTM D5192-91, *Standard Practice for Collection of Coal Samples from Core* and to use laboratory procedures in ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* to estimate the inherent moisture in the sample. If a channel sample method is used the operator would be required to collect the sample using procedures in ASTM D4596-93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* and to use laboratory procedures in either ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C*, or ASTM D3302-91, *Standard Test Method for Total Moisture in Coal* to estimate the inherent moisture in the sample. To collect a sample of blended coal, as-shipped coal, tippable coal, commingled coal, or coal from slurry ponds an operator would use Procedures in ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample* and laboratory procedures in ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* would be required to estimate the inherent moisture in the sample.

An operator would be required to select one of two options for timing inherent moisture tests, either quarterly or monthly. If a quarterly inherent moisture test is chosen, the operator would have to report the results of one inherent moisture test taken at any time during the quarter on the OSM-1 form for the quarter in which the test was taken. If monthly inherent moisture testing is preferred, the operator would be required to create a 24-month inherent moisture baseline during the first 24-months a coal seam is in continuous operation. To create the 24-month inherent moisture baseline an operator would have to collect and test one sample in each month of the calendar quarter. The quarterly inherent moisture percentage reported to OSM for the first 8 quarters a seam is in continuous operation would then be based on a weighted average of the 3-monthly inherent moisture test results. To determine the quarterly weighted average inherent moisture percentage an operator would have to: (1) multiply the inherent moisture percentage for one month by the number of tons produced or shipped in that month to find the

monthly inherent moisture tonnage; (2) add the inherent moisture tonnage determined in (1) for each of the 3 months to find the quarterly inherent moisture tonnage; (3) divide the inherent moisture tonnage found in (2) by the total number of tons produced or shipped during the three months of the quarter; and, (4) report the weighted average percentage for the quarter to OSM on the OSM-1 form. After the first 24-months an operator would have to use an updated rolling average percentage to report inherent moisture percentages for all subsequent quarters in which a coal seam is continuously mined. The rolling average percentage would be calculated by: adding the results of one inherent moisture test of one coal sample collected during every 12-month period to the inherent moisture percentages for the preceding 23 tests, and dividing the sum of these tests by 24.

Section 870.19(a) provides instruction on how an operator would calculate the excess moisture in high-rank coal by using one of two methods. One method involves the simple subtraction of the inherent moisture percentage from the total moisture percentage as it is found in the existing rule. OSM expects that most operators of small to medium size mines would likely prefer to continue to use this method. A new alternative formula is added as a second method in §870.19(a) that would allow an adjustment in the excess moisture calculation for a percentage of inherent moisture contained in the as-shipped coal. Some operators who either mine a large volume of coal, or mine coal with a significant variance in total and inherent moisture, have requested OSM's approval to use this formula for calculating a tonnage reduction for excess moisture. OSM is now proposing this option as an alternative to the existing formula used to determine the excess moisture percentage. The excess moisture percentage found in §870.19(a) is multiplied by the tonnage shipped or used during the quarter to determine the excess moisture reduced tonnage for the quarter under §870.19(b).

#### *How to calculate excess moisture in LOW-rank coal—Section 870.20*

A new §870.20 would provide standard criteria for an operator to use to establish excess moisture in low-rank coal. Table 3 includes the ASTM standard sample collection method, ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample*, and test procedure, ASTM-D 3302-91, *Standard Test Method for Total Moisture in Coal*, that OSM would

accept for use as the basis for calculating the percentage of total moisture in as shipped low-rank coal each day the coal is either shipped or used.

The daily total moisture test results would be converted to quarterly figures to be reported to OSM on the OSM-1 Coal Reclamation Fee Report. To calculate the quarterly total moisture percentage an operator would: (1) multiply the daily total moisture percentage by the tonnage shipped or used that day, to find the daily total moisture tonnage; (2) add the daily total moisture tonnage for each day in the quarter; and, (3) add the daily tonnage shipped or used in the quarter, to find the total tonnage shipped or used during the quarter. Then, divide the sum of the daily total moisture tonnage, step (2), by the sum of the daily tonnage shipped or used in the quarter, step (3). This will result in the total moisture percentage in low-rank coal for the quarter which would be reported on the OSM-1, Coal Reclamation Fee Report.

Table 4 provides instructions on how an operator would determine the inherent moisture percentage of coal mined from a bench of low-rank coal by: collecting one sample of as-shipped coal in each month of the calendar quarter using ASTM D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal*; and, testing each sample for equilibrium moisture following laboratory procedures in ASTM D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C*.

The operator would calculate the inherent moisture percentage to report to OSM for the quarter by averaging the results from the 3 monthly equilibrium moisture tests, and adding the correction factor. Table 5 provides the methodology for establishing the correction factor for all coal mined from each bench of low-rank coal.

Table 5 provides the method an operator would be required to use to establish a correction factor during the first quarter an excess moisture allowance is taken on low-rank coal mined from a bench. The correction factor would be found by using ASTM D1412 Appendix XI, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* to collect 5 samples of coal from a freshly exposed, unweathered coal seam face during each month of the quarter. Each of the 15 samples, 5 in each quarter, would be tested for inherent moisture and equilibrium moisture as required by ASTM D1412 Appendix XI, *Standard Test Method for*

*Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C.*

The operator would be required to establish the correction factor for the first quarter and all later quarters by: averaging the 15 monthly inherent moisture test results; and, averaging the 15 monthly equilibrium moisture test results; and, subtracting the average inherent moisture from the average equilibrium moisture. The correction factor would apply only to coal mined from the bench that is sampled. The correction factor could be changed at any time provided new samples are taken and all procedures shown in Table 5 are repeated.

#### IV. Procedural Matters

##### *Federal Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, OSM is requesting comments from the public and the Office of Management and Budget (OMB) on the information collections contained in this proposed rulemaking. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of OSM, including whether the information will have practical utility; (b) the accuracy of OSM's estimate of the burdens of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection on the respondents, including the use of automated collection techniques or other forms of information technology. No person is required to respond to a collection of information unless it displays a currently valid OMB Control Number. OSM's Control Numbers are displayed in 30 CFR Parts 710-955.

##### 30 CFR Part 870

*Title:* Abandoned mine reclamation fund—fee collection and coal production reporting.

*OMB Control Number:* 1029-0090.

*Abstract:* Section 402 of the Surface Mining Control and Reclamation Act of 1977 requires operators of coal mining operations to pay a reclamation fee to the Secretary for deposit in the Abandoned Mine Reclamation Fund for the purpose of reclaiming lands mined and left abandoned, or inadequately reclaimed, prior to the Act's effective date. Reclamation fees are to be paid on each ton of coal produced.

Section 870.18 of the regulations allows an operator to take an excess moisture content allowance when calculating the amount of reclamation

fees that are owed. Top substantiate the calculated moisture deduction claimed, an operator (or other entity responsible for the payment of the reclamation fee) is required to document by standard laboratory analysis the excess moisture content for each coal seam mined. This documentation must be updated as necessary to establish the continuing validity of the excess moisture content allowance taken by the operator.

*Need For and Use:* The information submitted will be used by OSM auditors to verify an operator's compliance with Section 402 of the Act and the requirements of the regulation at 30 CFR 870.18, 870.19, and 870.20. During an audit, operators must substantiate how the calculation for excess moisture was determined. Operators must retain their records for a 6-year period to allow for the audit of tax records. Courts have ruled that the AML fee is an excise tax. The applicable provision of the Energy Policy Act of 1992 (Section 2515) extended the fee through 2004.

*Respondents:* Approximately 1,050 coal mining operators who take the coal moisture deduction allowance.

*Total Annual Burden:* OSM estimates that 2 hours will be required to prepare and maintain the documentation for audit purposes per respondent. The total annual burden is estimated to be 2,100 hours.

Send comments regarding these burden estimates or any other aspect of these information collection requirements by January 2, 1997, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, SIB 120, 1951 Constitution Avenue, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Please refer to OMB Control Number 1029-090 in any correspondence.

##### *Executive Order 12988 on Civil Justice Reform*

The Department of the Interior has determined that this proposed rule meets the requirements of sections (3)(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform (56 FR 55195).

##### *Executive Order 12866*

This proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

The proposed rule is not considered economically significant under section 3(f)(1) of Executive Order 12866 and will not have a significant economic

effect on the coal mining industry, or on regional or national economies. OSM is attempting to provide a viable methodology that will enable coal mine operators to calculate the correct allowance for excess moisture. OSM is not attempting to specify any given amount, or percentage, as an excess moisture allowance. For that reason it is not possible to predict the cost that this revision will have in terms of the amount of the additional AML fees that the industry will pay and the government collect or the industry save and the government not collect. Based on AML tonnages reported, and the total moisture allowances taken for 1995, the industry saved approximately \$5,284,000 (rounded) in terms of the tonnage reported. With regard to benefits, the proposed rule will ensure that all excess moisture allowances are fair and equitable. OSM's proposal also includes an option that would provide operators with a method to calculate an allowance for the inherent moisture present in as-shipped coal. This would be of particular benefit when an operator sells large volumes of coal, and/or sells coal with a substantial variance between the total and inherent moisture.

To assist OSM in complying with the requirements of Executive Order 12866, OSM invites comments on the potential costs and benefits of the proposed rule.

##### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities for the reason stated below. This proposed rule will provide two methods for operators to calculate the excess moisture in high-rank coal. OSM expects that most operators of small to medium size mines would likely prefer to continue to use the current method of calculation while operators who either mine a large volume of coal, or mine coal with a significant variance in total and inherent moisture, will use the proposed option as an alternative to the existing formula used to determine the excess moisture percentage. Thus, for small operators any change from current practices would be optional.

##### *Unfunded Mandates Reform Act*

This rule is not expected to impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

*National Environmental Policy Act*

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact (FONSI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see ADDRESSES). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

*Author*

The principal author of this proposed rule is Dr. Kewal Kohli, Mining Engineer, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220.

Inquiries with respect to the proposed rule should be directed to Dr. Kohli at the address and telephone specified under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects in 30 CFR Part 870

Incorporation by reference, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: June 24, 1996.

Bob Armstrong,

*Assistant Secretary, Land and Minerals Management.*

Accordingly, it is proposed to amend 30 CFR part 870 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: 30 U.S.C. 1201 *et seq.*

2. Section 870.5 is amended by revising definitions of "excess moisture," "inherent moisture" and "total moisture" to read as follows:

**§ 870.5 Definitions.**

\* \* \* \* \*

*Excess moisture* means the difference between total moisture and inherent moisture, calculated according to § 870.19 for high-rank coals or the difference between total moisture and inherent moisture calculated according to § 870.20 for low-rank coals.

\* \* \* \* \*

*Inherent moisture* means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but excluding that present in macroscopically visible fractures, as determined according to § 870.19(a) or § 870.20(a).

\* \* \* \* \*

*Total moisture* means the measure of weight loss in an air atmosphere under rigidly controlled conditions of temperature, time and air flow, as determined according to either § 870.19(a) or § 870.20(a).

\* \* \* \* \*

3. Section 870.18 is revised to read as follows:

**§ 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 § 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 OSM-1, Coal Reclamation Fee Report, for every calendar quarter in which you claim a deduction. Some cautions:

(a) You or a customer of yours 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. Applicable ASTM standards 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, 1916 Race Street, Philadelphia, Pennsylvania, 19103-1187. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 120, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North

Capitol St., NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

(1) *As-shipped coal* means raw or prepared coal that is loaded for shipment from the mine or loading facility.

(2) *Channel sample* means a sample of coal collected according to ASTM standard D4596-93 from a channel extending from the top to the bottom of a coal seam.

(3) *Core sample* means a cylindrical sample of coal that represents the thickness of a coal seam penetrated by drilling according to ASTM standard D5192-91.

(4) *Correction factor* means the difference between the equilibrium moisture and the inherent moisture in low rank coals for the purpose of § 870.20(a).

(5) *Equilibrium moisture* means an estimate of the inherent moisture in all coals. The equilibrium moisture is determined according to ASTM standard D1412-93 and accompanying appendices, as appropriate.

(6) *High-rank coals* means anthracite, bituminous, and subbituminous A and B coals.

(7) *Low-rank coals* means subbituminous C and lignite coals.

(8) *Tipple coal* means coal from a mine or loading facility that is ready for shipment.

4. Sections 870.19 and 870.20 are added to read as follows:

**§ 870.19 How to calculate excess moisture in high-rank coal.**

Here are the requirements for calculating the excess moisture in high-rank coal for a calendar quarter. Applicable ASTM standards 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, 1916 Race Street, Philadelphia, Pennsylvania, 19103-1187. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 120, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North

Capitol St., NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left( IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped

moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Table 2 of this section.

(b) Multiply the excess moisture percentage by the tonnage shipped or used during the quarter.

TABLE 1 TO § 870.19.—CALCULATING TOTAL MOISTURE PERCENTAGE IN HIGH-RANK COAL <sup>1</sup>

Collect and test each day you ship or use coal	Convert daily test results to quarterly figures and report them
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89 Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91.	1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage. 2. Add up daily total moisture tonnage for the quarter. 3. Add up daily tonnage shipped or used in the quarter. 4. Divide 2 by 3. Report this total moisture percentage in high-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

<sup>1</sup> See § 870.19 for the incorporation by reference of the ASTM standards.

TABLE 2 TO § 870.19.—CALCULATING INHERENT MOISTURE PERCENTAGE IN HIGH-RANK COAL <sup>1</sup>

Choose from 3 ways to collect and test	Choose from 2 ways to time the tests and convert the results for quarterly reporting
<p style="text-align: center;">First</p> Collect a core sample. Follow procedures in ASTM D5192-91. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.	<p style="text-align: center;">First</p> Collect and test once each quarter. Report test results by quarter on OSM-1. Test results need no converting; they are in quarterly units already.
<p style="text-align: center;">Or second</p> Collect a channel sample. Follow procedures in ASTM D4596-93. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93 or ASTM D3302-91.	<p style="text-align: center;">Or second</p> Create a 24-month baseline and update as follows:  <i>For reporting months 1-24...</i> Collect and test one sample each month. Each quarter, calculate a weighted average percentage of inherent moisture: <ul style="list-style-type: none"> <li>• Multiply a month's inherent moisture percentage by tons produced or shipped. You now have the month's inherent moisture tonnage.</li> <li>• Add up 3 months of that inherent moisture tonnage.</li> <li>• Divide by tons produced or shipped in those 3 months.</li> </ul> Report the quarter's weighted average percentage on OSM-1.
<p style="text-align: center;">Or third</p> Collect a sample of blended coal, as-shipped coal, tippie coal, commingled coal, or coal from slurry ponds. Follow procedures in ASTM D2234-89. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.	<p style="text-align: center;">For all subsequent months...</p> Collect and test one sample for inherent moisture every 12 months. Calculate—and report in the following 4 quarters—one updated rolling average percentage: <ul style="list-style-type: none"> <li>• Add to the annual sample percentage the inherent moisture percentages for the preceding 23 tests.</li> <li>• Divide by 24.</li> </ul> Report the quarter's weighted average percentage on OSM-1.

<sup>1</sup> See § 870.19 for the incorporation by reference of the ASTM standards.

**§ 870.20 How to calculate excess moisture in LOW-rank coal.**

Here are the requirements for calculating the excess moisture in low-rank coal for a calendar quarter. Applicable ASTM standards 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, 1916 Race Street, Philadelphia, Pennsylvania, 19103-1187. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 120, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left( IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Tables 2 and 3 of this section.

(b) Multiply the excess moisture percentage by the tonnage shipped or used during the quarter.

TABLE 1 TO § 870.20.—CALCULATING TOTAL MOISTURE PERCENTAGE IN LOW-RANK COAL<sup>1</sup>

Collect and test each day you ship or use coal	Convert test results to quarterly figures and report them
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89. Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91.	Convert daily total moisture percentage to quarterly total moisture percentage: 1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage. 2. Add up daily total moisture tonnage for the quarter. 3. Add up daily tonnage shipped or used in the quarter. 4. Divide 2 by 3. Report this total moisture percentage in low-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

<sup>1</sup> See § 870.20 for the incorporation by reference of the ASTM standards.

TABLE 2 TO § 870.20.—CALCULATING INHERENT MOISTURE PERCENTAGE IN LOW-RANK COAL<sup>1</sup>

Collect and test once a month	Convert test results to quarterly figures and report them
Collect 1 sample of as-shipped coal. Follow procedures in ASTM D2234-89. Test the sample for equilibrium moisture. Follow laboratory procedures in ASTM D1412-93.	Calculate inherent moisture percentage for the quarter: • Average the 3 equilibrium moisture results from your monthly tests. • Add to this average a Correction Factor that you calculate for the first quarter according to Table 5 below. Report this inherent moisture percentage for the quarter on OSM-1.

<sup>1</sup> See § 870.20 for the incorporation by reference of the ASTM standards.

TABLE 3 TO § 870.20.—CALCULATING THE CORRECTION FACTOR FOR TABLE 4<sup>1</sup>

Collect and test each month in the first quarter	Convert test results into a correction factor for all quarterly reports
Collect 5 samples of a freshly exposed, unweathered coal seam face. Follow procedures in ASTM D1412-93 Appendix XI.  Test each sample for two things: • Inherent moisture • Equilibrium moisture. Follow laboratory procedures in ASTM D1412-93 Appendix XI.	Use the test results to calculate a correction factor: • Average the 15 inherent moisture results from your monthly tests. • Average the 15 equilibrium moisture results from your monthly tests. • Subtract the average equilibrium moisture from the average inherent moisture. You now have a correction factor for the first quarter the deduction is taken, and all later quarters. Use it in Table 4 above. You may change the correction factor at any time by repeating the steps in this table. A correction factor applies to only the bench you sample.

<sup>1</sup> See § 870.20 for the incorporation by reference of the ASTM standards.

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