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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 rates.
870.14 Determination of percentage-based fees.
870.15 Reclamation fee payment.
870.16 Acceptable payment methods.
870.17 Filing the OSM–1 Form.
870.18 General rules for calculating excess moisture.
870.19 How to calculate excess moisture in HIGH-rank coals.
870.20 How to calculate excess moisture in LOW-rank coals.
870.21 Late payments.
870.22 Maintaining required production records.
870.23 Consequences of noncompliance.

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

§ 870.1 Scope.

This part sets out our procedures to collect fees for the Fund and to report coal production.

[73 FR 67631, Nov. 14, 2008]

§ 870.5 Definitions.

As used in this Part—

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.

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.

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.

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.

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).

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:

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

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.

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.

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 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).

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; 62 FR 60142, Nov. 6, 1997; 73 FR 67631, Nov. 14, 2008]

§ 870.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 870 and the OSM–1 Form and assigned control number 1029–0063. The information is used to maintain a record of coal produced nationwide each calendar quarter, the method of coal removal, the type of coal, and the basis for coal tonnage reporting. Persons must respond to meet the requirements of SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67631, Nov. 14, 2008]

§ 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 as an incidental part of Federal, State, or local government-financed highway or other construction;

(c) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ 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

(d) 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; 73 FR 67631, Nov. 14, 2008]

§ 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.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28169, May 31, 1994; 69 FR 56130, Sept. 17, 2004]

§ 870.13 Fee rates.

(a) *Fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021.* The fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed coal.	(i) If value of coal is $2.80 per ton or more, fee is 28 cents per ton. (ii) If value of coal is less than $2.80 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is $1.20 per ton or more, fee is 12 cents per ton. (ii) If value of coal is less than $1.20 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is $4.00 per ton or more, fee is 8 cents per ton. (ii) If value of coal is less than $4.00 per ton, fee is 2 percent of the value.
(4) In situ coal mining fee	All types other than lignite	12 cents per ton based on Btus per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	8 cents per ton based on the Btus per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

(b) *Fees for coal produced for sale, transfer, or use from October 1, 2021, through September 30, 2034.* Fees for coal produced for sale, transfer, or use from October 1, 2021, through September 30, 2034, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed.	(i) If value of coal is $2.24 per ton or more, fee is 22.4 cents per ton. (ii) If value of coal is less than $2.24 per ton, fee is 10 percent of the value.
(2) Underground mining fee.	Anthracite, bituminous, and subbituminous.	(i) If value of coal is $0.96 per ton or more, fee is 9.6 cents per ton.

Type of fee	Type of coal	Amount of fee
		(ii) If value of coal is less than $0.96 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is $3.20 per ton or more, fee is 6.4 cents per ton.
		(ii) If value of coal is less than $3.20 per ton, fee is 2 percent of the value.
(4) In situ coal mining fee	All types other than lignite.	9.6 cents per ton based on Btus per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	6.4 cents per ton based on the Btus per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

[47 FR 28593, June 30, 1982, as amended at 69 FR 56130, Sept. 17, 2004; 73 FR 67631, Nov. 14, 2008; 87 FR 2345, Jan. 14, 2022; 87 FR 51908, Aug. 24, 2022]

§ 870.14 Determination of percentage-based fees.

(a) If you pay a fee based on a percentage of the value of coal, you must include documentation supporting the claimed coal value with your fee payment and production report. We may review this information and any additional documentation we may require, including examination of your books and records. We may accept the valuation you claim, or we may determine another value of the coal.

(b) If we determine that a higher fee must be paid, you must pay the additional fee together with interest computed under § 870.21.

[73 FR 67632, Nov. 14, 2008]

§ 870.15 Reclamation fee payment.

(a) You must pay the reclamation fee based on calendar quarter tonnage no later than 30 days after the end of each calendar quarter.

(b) Along with any fee payment due, you must submit to us a completed Coal Sales and Reclamation Fee Report (OSM–1 Form). You can file the OSM–1 Form either in paper format or in electronic format as specified in § 870.17. On the OSM–1 Form, you must report:

(1) The tonnage of coal sold, used, or transferred;

(2) The name and address of any person or entity who is the owner of 10 percent or more of the mineral estate for a given permit; and

(3) The name and address of any person or entity who purchases 10 percent or more of the production from a given permit, during the applicable quarter.

(c) If no single mineral owner or purchaser meets the 10 percent criterion in paragraphs (b)(2) and (b)(3) of this section, then you must report the name and address of the largest single mineral owner and purchaser. If several persons have successively transferred the mineral rights, you must include on the OSM–1 Form information on the last owner(s) in the chain before the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

(d) At the time of reporting, you may designate the information required by paragraphs (b) and (c) of this section as confidential.

[73 FR 67632, Nov. 14, 2008]

§ 870.16 Acceptable payment methods.

(a) If you owe total quarterly reclamation fees of $500 or more for one or more mines, you must:

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

(2) Forward payments by electronic transfer;

(3) Include the applicable Master Entity No.(s) (Part 1-Block 3 on the OSM–1 Form), and OSM Document No.(s) (Part 1-upper right corner of the OSM–1 Form) with the electronic payment; and

(4) Use our approved form or approved electronic 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.

(b) If you owe less than $500 in quarterly reclamation fees for one or more mines, you may:

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

(2) Submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement in the same envelope with the OSM–1 Form to the address indicated in the Instructions for Completing the OSM–1 Form.

[73 FR 67632, Nov. 14, 2008, as amended at 89 FR 8073, Feb. 6, 2024]

§ 870.17 Filing the OSM–1 Form.

(a) *Filing an OSM–1 Form electronically*. You may submit a quarterly electronic OSM–1 Form in place of a quarterly paper OSM–1 Form. Submitting the OSM–1 Form electronically is optional. If you submit your form electronically, you must use a methodology and medium approved by us and do one of the following:

(1) Maintain a properly notarized paper copy of the identical OSM–1 Form for review and approval by our Fee Compliance auditors (in order to comply with the notary requirement in SMCRA); or

(2) Submit an electronically signed and dated statement made under penalty of perjury that the information contained in the OSM–1 Form is true and correct.

(b) *Filing a paper OSM–1 Form*. Alternatively, you may submit a quarterly paper OSM–1 Form. If you choose to submit your form on paper, you must do one of the following:

(1) Submit a properly notarized copy of the OSM–1 Form; or

(2) Submit the OSM–1 Form with a signed and dated statement made under penalty of perjury that the information contained in the form is true and correct. Under the unsworn statement option, you must sign the following statement: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

[73 FR 67632, Nov. 14, 2008]

§ 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 § 870.21(a) and penalties computed according to § 870.21(c).

(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, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of

this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

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

(2) *Blended coal* means coals of various qualities and predetermined quantities mixed to control the final product.

(3) *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.

(4) *Commingled coal* means coal from different sources and/or types combined prior to shipment or use.

(5) *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.

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

(7) *Equilibrium moisture* means the moisture in the coal as determined through ASTM standard D1412–93.

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

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

(10) *Slurry pond* means any natural or artificial pond or lagoon used for the settlement and draining of the solids from the slurry resulting from the coal washing process.

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

[62 FR 60142, Nov. 6, 1997, as amended at 73 FR 67633, Nov. 14, 2008]

§ 870.19 How to calculate excess moisture in HIGH-rank coals.

Here are the requirements for calculating the excess moisture in high-rank coals for a calendar quarter. ASTM standards D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal*; D3302–91, *Standard Test Method for Total Moisture in Coal*; D5192–91, *Standard Practice for Collection of Coal Samples from Core*; D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C*; and, D4596–93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* 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, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(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 from the bonafide sales, transfers of ownership, or uses by the operator during the quarter.

Table 1

Calculating TOTAL moisture percentage in HIGH-rank coals [1]

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. Obtain prior OSM approval for use of other procedures.	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.

[1] See §870.19 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in HIGH-rank coals [1]

Choose from 3 ways to collect and test ▼	Choose from 2 ways to time the tests and convert the results for quarterly reporting ▼
First Collect a core sample[2]. Follow procedures in ASTM D5192-91. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.	**First** Collect and test once each quarter. Report test results for that quarter on OSM-1. Test results need no converting; they are in quarterly units already.
Or second 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.	**Or second** Create a 24-month baseline and update as follows: *For reporting months 1-24 . . .* Collect and test one sample each month. Each quarter, calculate a weighted average percentage of inherent moisture: • Multiply a month's inherent moisture percentage by tons produced or shipped. You now have the month's inherent moisture tonnage. • Add up 3 months of that inherent moisture tonnage. • Divide by tons produced or shipped in those 3 months. Report the quarter's weighted average percentage on OSM-1. *For all subsequent months . . .* Collect and test one sample for inherent moisture every 12 months. Calculate—and report in the following 4 quarters—one updated rolling average percentage: • Add to the annual sample percentage the inherent moisture percentages for the preceding 23 tests. • Divide by 24. Report the weighted average percentage on OSM-1.
Or third Collect a sample of blended coal, as-shipped coal, tipple 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.	

[1] See §870.19 for the incorporation by reference of the ASTM standards.
[2] Core sampling was approved by the ASTM effective January 1, 1992.

[62 FR 60143, Nov. 6, 1997]

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

Here are the requirements for calculating the excess moisture in low-rank coals for a calendar quarter. ASTM standards D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal;* D3302–91, *Standard Test Method for Total Moisture in Coal;* 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, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW.,

Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(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 from the bona fide sales, transfers of ownership, or uses by the operator during the quarter.

Table 1

Calculating TOTAL moisture percentage in LOW-rank coals [1]

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. Obtain prior OSM approval for use of other procedures.	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.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in LOW-rank coals [1]

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 3 below. Report this inherent moisture percentage for the quarter on OSM-1.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

Table 3

Calculating the Correction Factor for Table 2 [1]

Collect and test in the first quarter a deduction is taken▼	Convert test results into a correction factor for all quarterly reports ▼
Collect 15 samples that are representative of the entire seam from a freshly exposed, unweathered coal seam face. Follow procedures in ASTM D1412-93 Appendix X1. Test each sample for two things: • Inherent moisture • Equilibrium moisture. Follow laboratory procedures in ASTM D1412-93 Appendix X1.	Use the test results to calculate a correction factor: • Average the 15 inherent moisture results from your tests. • Average the 15 equilibrium moisture results from your 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 2 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. If you mine multiple benches or seams simultaneously, you may combine the sample results from the different benches or seams to calculate an average correction factor. You may update the correction factor by repeating the procedures or incorporating new test results with the initial result.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

[62 FR 60146, Nov. 6, 1997, as amended at 75 FR 60276, Sept. 29, 2010]

§ 870.21 Late payments.

(a) Fee payments postmarked later than 30 days after the calendar quarter for which the fee was owed are subject to interest. Late reclamation fee payments are subject to interest at the rate established by the U.S. Department of the Treasury for late charges on payments to the Federal Government. The Treasury current value of funds rate is published annually in the FEDERAL REGISTER and on Treasury's Web site.

(b) We will charge interest on unpaid reclamation fees from the 31st day following the end of the calendar quarter for which the fee payment is owed to the date of payment. If you are delinquent, we will bill you monthly and initiate whatever action is necessary

to collect full payment of all fees and interest.

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

(d) For all delinquent fees, interest, and penalties, you must pay a processing and handling charge that we will set based upon the following components:

(1) For debts referred to a collection agency, the amount charged to us by the collection agency;

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

(3) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, but paid before litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(4) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

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

(e) We will not charge prejudgment interest on any processing and handling charges.

[73 FR 67633, Nov. 14, 2008]

§ 870.22 Maintaining required production records.

(a) If you engage in or conduct a surface coal mining operation, you must maintain up-to-date records that contain at least the following information:

(1) The tons of coal you produced, bought, sold, or transferred, the amount of money you received per ton, the name of person to whom you sold or transferred the coal, and the date of each sale or transfer;

(2) The tons of coal you used and your date of your consumption;

(3) The tons of coal you stockpiled or inventoried that are not classified as sold for fee computation purposes under § 870.12; and

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

(b) We must have access to your records of any surface coal mining operation for review. Your records must be available to us at reasonable times.

(c) We may inspect and copy any of your books or records that are necessary to substantiate the accuracy of your OSM–1 Form and payments. If the fee is paid at the maximum rate, we will not copy information relative to price. We will protect all copied information as authorized or required by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

(d) You must maintain your books and records for 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) If you do not maintain or make available your books and records as required in this section, we will estimate the fee due under this part through use of average production figures based upon the nature and acreage of your coal mining operation.

(1) We will assess the fee at the amount we estimate plus an additional 20 percent to account for possible error in our fee liability estimate.

(2) After you receive our fee liability estimate, you may request that we revise that estimate based upon your information. However, you must demonstrate that our fee liability estimate is incorrect. You may do this by providing adequate documentation that we find to be acceptable and comparable to the information required in § 870.19(a).

[73 FR 67633, Nov. 14, 2008]

§ 870.23 Consequences of noncompliance.

If you do not maintain adequate records, provide us with access to records of a surface coal mining operation, or pay overdue reclamation fees, including interest on late payments or

underpayments, we may take one or more of the following actions:

(a) Start a legal action against you;

(b) Report you to the Internal Revenue Service;

(c) Report you to State agencies responsible for taxation;

(d) Report you to credit bureaus;

(e) Refer you to collection agencies; or

(f) Take some other appropriate action against you.

[73 FR 67633, Nov. 14, 2008]

PART 872—MONEYS AVAILABLE TO ELIGIBLE STATES AND INDIAN TRIBES

Sec.

872.1 What does this Part do?
872.5 Definitions.
872.10 Information collection.
872.11 Where do moneys in the Fund come from?
872.12 Where do moneys distributed from the Fund and other sources go?
872.13 What moneys does OSM distribute each year?
872.14 What are State share funds?
872.15 How does OSM distribute and award State share funds?
872.16 Are there any restrictions on how States may use State share funds?
872.17 What are Tribal share Funds?
872.18 How does OSM distribute and award Tribal share funds?
872.19 Are there any restrictions on how Indian tribes may use Tribal share funds?
872.20 What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program?
872.21 What are historic coal funds?
872.22 How does OSM distribute and award historic coal funds?
872.23 Are there any restrictions on how you may use historic coal funds?
872.24 What are Federal expense funds?
872.25 Are there any restrictions on how OSM may use Federal expense funds?
872.26 What are minimum program make up funds?
872.27 How does OSM distribute and award minimum program make up funds?
872.28 Are there any restrictions on how you may use minimum program make up funds?
872.29 What are prior balance replacement funds?
872.30 How does OSM distribute and award prior balance replacement funds?
872.31 Are there any restrictions on how you may use prior balance replacement funds?
872.32 What are certified in lieu funds?
872.33 How does OSM distribute and award certified in lieu funds?
872.34 Are there any restrictions on how you may use certified in lieu funds?
872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

AUTHORITY: 30 U.S.C. 1201 *et seq.*, Pub. L. 117–58.

SOURCE: 73 FR 67634, Nov. 14, 2008, unless otherwise noted.

§ 872.1 What does this part do?

This part sets forth procedures and general responsibilities for managing funds received under Title IV of the Surface Mining Control and Reclamation Act of 1977, as amended.

§ 872.5 Definitions.

As used in this part—

Allocate means to identify moneys in our records at the time they are received by the Fund. The allocation process identifies moneys in the Fund by the type of funds collected, including the specific State or Indian tribal share.

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Indian Abandoned Mine Reclamation Fund or *Indian Fund* means a separate fund that an Indian tribe established to account for moneys we award under parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the Indian Fund.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

State Abandoned Mine Reclamation Fund or *State Fund* means a separate fund that a State established to account for moneys we award under parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the State Fund.