

**FEDERAL REGISTER: 43 FR 20793 (May 5, 1978)**

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 837

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting; Establishment of an Interest Rate for Delinquent Reclamation Fee Payments and Method of Interest Computation

ACTION: Final rulemaking.

**SUMMARY:** These rules revise the reclamation fee payment regulations to establish an interest rate to be assessed against delinquent fee payments and to provide a method for computing interest on late payments.

EFFECTIVE DATE: June 14, 1978.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: M. Richard Nalbandian, Chief, Division of Reclamation Planning and Standards, Abandoned Mine Land Reclamation, 202-343-4057.

**SUPPLEMENTARY INFORMATION:**

Proposed rules establishing an interest rate for delinquent fee payments and providing a method of computation were published in the FEDERAL REGISTER on February 21, 1978. (43 FR 7305). At the close of the comment period on March 23, 1978, comments had been received from four commenters.

The purpose of these rules is to provide a financial inducement for operators to comply with the statutory requirement in Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) that reclamation fees must be paid no later than 30 days after the end of the calendar quarter for which they were due. The rules are issued under the Secretary's authority to promulgate rules and regulations that may be necessary or expedient to implement and administer the provisions of Title IV (section 412(a), 30 U.S.C. 1242(a)). The rule is deemed necessary to provide an administratively effective method for encouraging operators to make accurate and timely reclamation fee payments on coal produced each calendar quarter. The rate is established at a sufficiently high level to discourage operators from withholding payments in order to realize financial gains by using money due and payable for other purposes. Under this rule, interest assessed on delinquent payments will become part of the debt owed the federal government in the event legal action is necessary to compel payment. {20794}

The Office of Surface Mining Reclamation and Enforcement (OSM) has made a few changes of a non-substantive editorial nature. A change also has been made in response to one of the public comments.

**EDITORIAL CHANGES**

1. In Section 837.15(d), the phrase "Except as provided in paragraph (e)," has been inserted at the beginning of the third sentence to clarify the time when interest shall first begin to accrue on delinquent payments. Paragraph (e) establishes the date when payments due on first and second calendar quarter coal production must be received to avoid being delinquent and the date when interest shall begin to accrue on those payments once they become delinquent.
2. The dates in Section 837.15(e) establishing the times when interest shall begin to accrue, and when payments due on coal produced from October 1, 1977 through March 31, 1978 must be received to avoid an interest charge, have been changed to produce a result consistent with the effective date of this final rule.
3. In Section 837.15(e), the word "on" before the date "April 1, 1978" has been deleted because it is unnecessary.

## **SUMMARY OF COMMENTS RECEIVED ON PROPOSED RULEMAKING**

1. One commenter stated that OSM does not have any statutory authority to impose, by rule, an interest charge of one percent per month on delinquent fee payments. This comment was not accepted. Section 412(a) of the Act authorizes the Secretary of the Interior to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of the Act relating to Abandoned Mine Reclamation (Title IV). Section 402(b) of the Act requires payment of reclamation fees on produced coal no later than thirty days after the end of each calendar quarter in which the coal was produced. Therefore, this rule is promulgated under the authority of Section 412(a) of the Act to provide the Secretary, through OSM, with an administratively effective method of assuring timely compliance with Section 402(b) of the Act.
2. One commenter suggested that the proposed amendments did not distinguish between an operator who had attempted, in good faith, to submit the appropriate fee and an operator who simply did not meet the payment deadline. The commenter argued that failure to distinguish between those two groups of operators would be inequitable. The commenter therefore proposed amending Section 837.14(b) to provide that interest charged on fees subsequently redetermined by the Director should be at the prevailing prime interest rate and that the interest should not begin to accrue until the end of the calendar quarter in which the determination of a higher fee was made. To complete the distinction, the commenter also suggested amending Section 837.15(d) by substituting "delinquent" for "late" in the last sentence of the paragraph, and amending Section 837.15(e) by adding the word "delinquent" to modify the phrase "reclamation fee payments" found in the first sentence. The latter comment was partially accepted by substituting "delinquent" for "late" in the last sentence of paragraph (d) of Section 837.15. That change provides consistency of word usage throughout the paragraph. However, for effective administration of Section 402(b) of the Act, it is necessary to provide a uniform rule applicable to all operators. It would be virtually impossible to distinguish between those operators who in good faith attempted to pay the appropriate fee and those who might use this commenter's proposed changes to avoid accurate reporting and timely payments required by the Act and the rules. Furthermore, a charge based on the prevailing prime interest rate would not provide sufficient incentive for operators to submit accurate production figures, although such a rule would allow operators to avoid a higher rate if they did report something on time. The Act and the rules requires both accurate reporting of production figures and timely payments.
3. Two commenters argued that the interest charge was unduly burdensome or punitive and that an interest charge greater than that paid by the Federal government on its general obligations and bonds would be unconscionable. This comment was not accepted. A sufficient financial inducement to encourage compliance within the time specified by Congress is necessary. OSM's goal is to collect the reclamation fee in an orderly and timely manner and, of course, the burden imposed by an interest charge will only fall on those operators who neglect their legal responsibility to pay on time.
4. Another commenter suggested that, with respect to coal mined during reclamation of previously abandoned areas, interest on delinquent fees should be eliminated entirely or should not begin to accrue until after reclamation is completed or until after an extended grace period of 90 days from the end of the applicable calendar quarter. No change was made because Section 402(b) of the Act requires payment of reclamation fees "no later than thirty days after the end of each calendar quarter." Moreover, Section 402(a) of the Act requires that "all operators of coal mining operations \* \* \* " must pay a reclamation fee on coal produced, whether or not coal is produced during reclamation activities.
5. One commenter argued that he found no consideration given for the usury laws of various States and that the proposed interest charge would, in many cases, exceed statutory limits. To constitute usury, there must be a loan of money or an agreement by the lender to refrain during a given period of time from requiring the borrower to repay a loan or debt which is due and payable. Here, the annual percentage charged, although possibly in excess of some statutory rates of interest, cannot be regarded as usury, since the essential borrowing and lending are not present. The Act establishes an obligation to pay a reclamation fee by a certain date and interest is charged only if the payment is not received on time. The interest charge is not a condition of such an agreement between the operators liable for the fee and OSM, but, rather it is an inducement for operators to meet their financial obligations under the Act.
6. A comment was received suggesting that OSM had not carefully reviewed the economic consequences of this proposal. OSM did consider the economic impact of the proposed rule, as noted in the FEDERAL REGISTER notice of proposed rulemaking (43 FR 7305), and determined in accordance with Departmental regulations that the anticipated consequences would not be of the magnitude required for the preparation of an Economic Impact Statement.

## **EFFECTIVE DATE**

Consistent with Department of the Interior policy, this final rulemaking will be effective June 14, 1978.

## DRAFTING INFORMATION

The principal authors of this rulemaking are Paul Reeves, Office of Surface Mining Reclamation and Enforcement, and John Beattie, Office of the Solicitor, Department of the Interior.

In consideration of the comments received and pursuant to the authority of sections 201(c) and 412(a) of the Surface Mining Control and Reclamation Act of 1977, 30 CFR Part 837 is amended as follows:

1. Paragraph (b) of Section 837.14 is revised to read as follows:

### **SECTION 837.14 - DETERMINATION OF PERCENTAGE BASED FEES.**

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under Section 837.15(d).

2. In Section 837.15 paragraph (d) is revised, paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added. Revised paragraph (d) and new paragraph (e) read as follows:

### **SECTION 837.15 - RECLAMATION FEE PAYMENT.**

(d) The reclamation fee payment for each calendar quarter shall be paid no later than 30 calendar days after the end of the calendar quarter. Delinquent payments are subject to interest at the rate of 1 percent per month, or any part thereof, on any amounts due. Except as provided in paragraph (e), interest shall begin to accrue on the 31st day following the end of the calendar quarter and will run until the date of payment, or until judgment is rendered by a court of competent jurisdiction in an action to compel payment of debts. The Office of Surface Mining Reclamation and Enforcement will then compute the interest on delinquent payments and bill the operator in accordance with procedures followed by the Department of the Interior for the collection of debts.

(e) Interest shall begin to accrue (31 days after publication) on reclamation fee payments due on coal produced from October 1, 1977 through March 31, 1978 for which payments have not been received by (30 day after publication). For reclamation fee payments due on coal produced during succeeding calendar quarters, beginning with the quarter commencing April 1, 1978, interest, at the prescribed rate, shall accrue in accordance with paragraph (d) of this section. {20795}

(Sections 201 and 412(a), Pub.L. 95-87, 91 Stat. 445 (30 U.S.C.1201,1242(a)).)

NOTE. - The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: May 9, 1978.

JOAN M. DAVENPORT, Assistant Secretary, Energy and Minerals.

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