

FEDERAL REGISTER: 42 FR 44955 (September 7, 1977)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 837

Abandoned Mine Reclamation Fund Fee Collection and Production Records; Proposed Rules

ACTION: Proposed Rules.

SUMMARY: These regulations provide each coal mine operator with methods to determine his reclamation fee obligation to the Abandoned Mine Reclamation Fund (fund) and provide instructions for the payment of the fee with a production statement of the proper location. This document implements the provisions of the Surface Mining Reclamation and Control Act of 1977 which promote the reclamation of coal and non-coal mined areas that have not been adequately reclaimed.

DATES: Comments must be received before October 7, 1977. Public hearings will be held September 20, 1977.

ADDRESSES: Comments should be addressed to: Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240. Public hearings will be held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C.; Klel Auditorium, 1416 Market Street, St. Louis, Mo.; Public Library Auditorium, 1347 Broadway, Denver, Colo.; and Morris Harvey College, Riggelman Hall, 2300 McCorkle Avenue, Charleston, W.Va.

FOR FURTHER INFORMATION CONTACT: Paul Reeves, Office of Surface Mining Reclamation and Enforcement, 202-343-4237.

SUPPLEMENTARY INFORMATION:

Coal mining activities have imposed large social and environmental costs on the public in many areas of the country in the form of unreclaimed lands, water pollution, and a decline in natural beauty. Uncontrolled coal mining practices, in many areas of the country, have resulted in degradation of the quality of life in local communities.

A major goal of the "Surface Mining Control and Reclamation Act of 1977" (Act) is to promote the reclamation of coal and noncoal mined areas that have not been adequately reclaimed. Part 837 addresses the financial aspect of reclaiming mined areas that were not adequately reclaimed before the enactment of this Act. The Act establishes an Abandoned Mine Reclamation Fund (fund) to be administered by the Secretary of the Interior, and supported by a reclamation fee imposed on coal production. The revenues derived from the reclamation fee are to be deposited in the fund for use by the Secretary, the Secretary of Agriculture and the States under approved programs for the purpose of reclaiming abandoned mined lands.

Two initial questions were at what point to determine the "value of a ton of coal at the mine", as used in section 402 of the Act, and how should the fee be levied on in situ coal consumed. Two approaches were considered. The first approach was to require the coal operator to weigh his coal as soon as it is extracted from the earth, or removed from deposits that are not in their original geological locations (reclaimed coal). This approach would require an operator to weigh the coal before any coal preparation process. The second approach was to base the reclamation fee on the weight and value of the coal at the time of its bona fide sale, transfer or use. The second approach is proposed since it represents the first common point where weights are usually determined within the industry.

The statutory definition of "surface coal mining operations" includes "in situ distillation or retorting" and therefore such operations are subject to the provisions of the Act including the reclamation fee payment provisions. It was determined that the amount of coal consumed or used by in situ distillation or retorting could be calculated by measuring the gas produced at the wellhead if the Btu value of the coal were known.

The regulations state that the reclamation fee shall be paid by the operator on each ton of coal produced for sale, transfer, or use, including the products of in situ mining, and the fee shall be determined by the weight, value, and Btu content at the time of initial bona fide sale, transfer, or use. Coal that was mined before October 1, 1977, but has not yet been sold, transferred or used will not be subject to the fee. The fee for coal produced during the fourth quarter, 1977, will be due no later than January 30, 1978.

DRAFTING INFORMATION

The principal authors of these proposed regulations are: Daniel Jones and George Williams, Abandoned Lands Work Group and Edward Clair, Office of the Solicitor, Department of the Interior.

Interested persons may submit written comments on the proposed regulation to the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240 no later than October 7, 1977.

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: September 2, 1977, 8:50 a.m.

LEO M. KRYLITZ,

Acting Secretary of the Interior. Secretary of the Interior.

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It is proposed to add Part 837 to Title 30, Chapter VII, to read as follows:

PART 837 - ABANDONED MINE RECLAMATION FUND - FEE COLLECTION AND COAL PRODUCTION REPORTING

Section

837.1	Scope.
837.2	Objectives.
837.3	Responsibility.
837.5	Definitions.
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837.12	Reclamation fee.
837.13	Fee computations.
837.14	Determination of percentage based fees.
837.15	Reclamation fee payment.
837.16	Production records.

AUTHORITY: Section 201, Pub.L. 96-87, 91 Stat. 445 (30 U.S.C. 1201).

SECTION 837.1 - SCOPE.

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

SECTION 837.2 - OBJECTIVES.

The objectives of this part are to establish -

- (a) Methods for determining the reclamation fee payable on coal production.
- (b) Procedures for paying the reclamation fee to the Director.
- (c) Requirements for production recordkeeping and reporting.

SECTION 837.3 - RESPONSIBILITY.

- (a) The Secretary of the Interior administers the fund.
- (b) The Director, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for administering the provisions of this part.

SECTION 837.5 - 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 a 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.

Coal preparation means the treatment of coal to improve its quality, and usually refers to the removal of impurities and the sizing of the coal to meet market specifications.

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

In situ coal mining means the process of recovering energy from coal in its natural geological location by igniting the coal seam and recovering the gas at the wellhead.

Lignite coal means consolidated lignitic coal having less than 8,300 British thermal units per pound, moist, and mineral-matter-free. British thermal units per pound are determined by Parr's formula, page 213, equation 3, D-388 (reapproved 1972), Part 26, 1976 Annual Book of ASTM Standards.

Reclaimed coal means coal recovered from a deposit that is not in its original geological location. Examples of these deposits are refuse piles or culm banks; refuse, culm or retaining dams and ponds that are or have been used during the mining or preparation process; and stream coal deposits.

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.

Ton means 2,000 pounds avoirdupois (.90718 metric ton).

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.

SECTION 837.11 - APPLICABILITY.

The regulations in this chapter apply to all surface coal mining and reclamation operations except -

- (a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;
- (b) The extraction of coal for commercial purposes by surface mining which affects two acres or less;
- (c) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction; and

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- (d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the mineral tonnage removed for commercial use or sale.

SECTION 837.12 - 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.
- (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 he can substantiate the amount of coal produced by each mining method by acceptable engineering calculations or other reports which the Director may require.
- (d) In computing the tons of coal produced for reclamation fee purposes in the fourth calendar quarter of 1977, the operator may deduct the tons of coal immediately available for sale, transfer, or use on September 30, 1977, from coal produced for sale, transfer, or use during the fourth calendar quarter of 1977. If the operator makes this deduction, he shall attach to his fourth quarter, 1977, OSM form 4100-1, a sworn and notarized statement of the amount of coal immediately available for sale, transfer, or use on September 30, 1977, and the quantity of such coal produced by surface and underground mining respectively.

SECTION 837.13 - FEE COMPUTATIONS.

(a) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than \$3 .50 per ton, in which case the fee is 10 percent of the value.

(1) If the value of a ton of coal is equal to or greater than \$3 .50 per ton, multiply the number of tons produced in the calendar quarter by \$0.35. Example: If the tonnage is 1,000, then 1,000 tons x \$0 .35 = \$350, which is the fee.

(2) If the value of a ton of coal is less than \$3 .50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1. Example: If the value of a ton of coal is \$2 and the tonnage is 1,000, then \$2 x 1,000 tons x 0.1 = \$200.

(b) *Underground mining fees.* The fee for anthracite, bituminous, and subbituminous coal is 15 cents per ton unless the value of such coal is less than \$1 .50 per ton, in which case the fee is 10 percent of the value.

(1) If the value of a ton of coal is equal to or greater than \$1 .50 per ton, multiply the number of tons produced in the calendar quarter by \$0.15. Example: If the tonnage is 1,000, then 1,000 tons x \$0 .15 = \$150, which is the fee.

(2) If the value of a ton of coal is less than \$1 .50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1. multiply the number of tons produced in a Example: If the value of a ton of coal is \$1 and the tonnage is 1,000, then \$1 x 1,000 tons x 0.1 = \$100, which is the fee.

(c) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than \$5 per ton, in which case the fee charged is 2 percent of the value.

(1) If the value of a ton of lignite is equal to or greater than \$5 per ton, per calendar quarter by \$0 .10. Example: If the tonnage is 1,000, then 1,000 tons x \$0.10 = \$100, which is the fee.

(2) If the value of a ton of lignite is less than \$5 per ton, multiply the value of a ton of lignite by the total number of tons produced in the calendar quarter by 0.02. Example: If the value is \$4 and the tonnage is 1,000, then \$4 x 1,000 tons x 0.02 = \$8 0, which is the fee.

(d) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on BTUs per ton in place equated to the gas produced at the site. The fee for in situ mined lignite is 10 cents per ton based on the BTUs per ton of coal in place equated to the gas produced at the site. For example, if the BTU value of in situ coal is determined to be 23 million BTUs per ton, then for every 23 million BTUs of gas produced at the wellhead, one ton of coal will be deemed produced for the purposes of this part.

(1) The BTU value of a ton of in place coal shall be determined by analyses, certified by an independent laboratory, of the coal seam that is effected for potential BTU value of a ton of in place coal.

(2) For anthracite, bituminous, and subbituminous coal the fee shall be computed as follows: $F = (G/C) \times VI$.

(3) For lignite coal the fee shall be computed as follows: $F = (G/L) \times V2$.

(4) For the purposes of this paragraph:

F = Reclamation fee.

C = million BTUs per ton of coal in place.

L = million BTUs per ton of lignite in place.

G = gas produced at the wellhead in million BTUs.

VI = \$0.15/ton equivalent; or if the value of a ton of coal equivalent is less than \$1.50, multiply the value by 0.1 and substitute the result for VI in the appropriate formula.

$V2$ = \$0.10/ton equivalent, or if the value of a ton of lignite equivalent is less than \$5 multiply the value by 0.02 and substitute the result for $V2$ in the appropriate formula.

SECTION 837.14 - DETERMINATION OF PERCENTAGE BASED FEES.

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

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee plus statutory interest within thirty days of notification by the Director that an additional fee payment is due.

SECTION 837.15 - RECLAMATION FEE PAYMENT.

(a) Each operator shall pay the reclamation fee on a calendar quarter basis.

(b) The fee for the fourth calendar quarter of 1977 shall be paid no later than January 30, 1978.

(c) Each operator shall use OSM Form 4100-1, Coal Production and Reclamation Fee Report form, for each quarterly payment period for each mine.

(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 an interest charge at the statutory rate.

(e) The OSM Form 4100-1 and check or money order for each coal mine shall be made payable to Director, Office of Surface Mining Reclamation and Enforcement and shall be sent in the same envelope to:

Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, P.O. Box 25065-DFC, Denver, Colo. 80225.

SECTION 837.16 - PRODUCTION RECORDS.

(a) Each operator shall maintain, on a current basis, books and records that contain at least the following information and data -

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

(2) Tons of coal used by the operator during production or coal preparation, and date of consumption.

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

(b) The fee compliance officer shall have access to the mine for the purpose of determining compliance with the regulations in this part.

(c) Each operator shall make any book or record available at reasonable times for inspection and copying by the fee compliance officer.

(d) The operator shall maintain books and records for a period of 7 years from the end of the calendar quarter in which the fee was due.

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