

FEDERAL REGISTER: 42 FR 62713 (December 13, 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 Coal Production Reporting

ACTION: Final rules.

SUMMARY: These regulations provide each coal mine operator with methods to determine his reclamation fee obligation to the Abandoned Mine Reclamation Fund (fund), provide instructions for the proper payment of the reclamation fee, and provide for the maintenance of production records.

EFFECTIVE DATE: December 8, 1977.

ADDRESS: Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4237.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Proposed rules implementing section 402 of the Surface Mining Control and Reclamation Act of 1977 were published in the FEDERAL REGISTER on September 7, 1977. Public hearings on the proposed rules were held on September 20, 1977. At the close of the comment period on October 7, 1977, comments had been received from 21 commenters.

The purpose of these regulations is to provide the operator with the method by which his reclamation fee will be determined and inform him of his obligation to maintain adequate production records to verify his payment.

The Office of Surface Mining Reclamation and Enforcement (OSM) has made a number of changes of a non-substantive editorial nature. Changes also have been made in response to public comments.

EDITORIAL CHANGES

1. The definition of coal preparation has been deleted because use of the phrase in Section 837.16 has been dropped. Records must be kept which reflect the amount of all coal consumed by an operator for any purpose. The intent is made clearer by merely dropping the term.
2. "Parr's formula" referred to in the definition of lignite has been reprinted verbatim to avoid possible confusion and the necessity to cross-reference. It should be noted that the Annual Book of ASTM Standards is the accepted work in the field, and formulae in the publication must be relied on for determination of the other factors in the formula.

Other changes have been made in the regulations and are discussed in relation to the specific comments received.

COMMENTS

1. One commenter suggested that subbituminous coal with a calorific value of less than 8300 Btu's per pound, moist, and mineral-matter-free should qualify for the lower fee applicable to lignite. This comment was not accepted. The statutory definition of lignite requires that the coal must meet not only the calorific value specification but also be "consolidated" and "lignitic". Subbituminous coal does not fulfill these conditions regardless of its Btu value.

2. Several commenters raised questions as to who is an operator responsible for payment of the fee. Section 402 of the Act requires that all operators pay the fee. Section 701 of the Act defines "operator" as the "person * * * * *" the coal. Commenters pointed out that in some cases the one who removes the coal is actually a contractor who may be paid only for his services and who has no ownership or beneficial interest in the coal. The number and variety of business arrangements employed in the coal industry make it difficult to further define "operator" without considering the specific facts of particular cases. We believe that Congress intended the burden of fee payment to fall upon the person who stands to benefit directly from the sale, transfer, or use of the coal. This intent will guide the Office in making decisions as to who is liable for the fee. The identification of operators will be made in light of the realities of the business world and will not turn solely on a literal interpretation of the word "removes".

OSM intends to send a preprinted Coal Production and Reclamation Fee Report form to all operators who are listed on the Mining Enforcement and Safety Administration's (MESA's) operator-mine identification number list. By using MESA's list, a dual identification system will not be necessary, and administrative and recordkeeping costs to the government and the coal mine operators will be reduced. OSM will make adjustments to the MESA list as necessary.

It is anticipated that many of the problems of determining liability for the fee among parties to particular business arrangements will be alleviated as production and supply contracts are negotiated and renegotiated. Contractual agreement for determining liability for the fee may be a helpful guide in determining liability for the fee. It should be emphasized, however, that the Office intends to collect the proper reclamation fee for each ton of coal produced for sale, transfer, or use.

3. One commenter recommended that the fee not be paid on reclaimed coal since the mining of such coal reduces an existing environmental impact of past mining and thereby achieves a purpose of the Act. The recommendation has not been accepted. The Act requires that all coal mining operations subject to the Act be liable for payment of the fee and defines these operations to include the mining of reclaimed coal. It is the intent of the regulations to impose the fee only once on each ton of coal; however, it is the operator's obligation to maintain records showing previous payment of the reclamation fee on reclaimed coal deposits.

4. Two commenters argued that because operators conducting mining operations on previously mined and unreclaimed lands would enhance the recovery of these lands, such operators should receive a credit to offset their total fee obligation. This recommendation has not been accepted because the Act requires that operators of all coal mining operations pay the fee.

5. Two commenters argued that the proposed regulation requiring an operator of an in situ mining operation to pay a reclamation fee should be changed since such a requirement exceeds the rulemaking authority provided under the Act. The provision remains in the final rules. Adequate authority to promulgate such a requirement exists since the Act requires that all mining operations be subject to the fee at an appropriate rate and the process of in situ distillation or retorting is included within the definition of surface coal mining operations.

6. Several commenters questioned the definition of the word "value" and requested that the definition be more specific. It was suggested that the term "value" exclude all royalties, severance taxes, other taxes and this reclamation fee. In the final rules, "value" has been redefined to clarify that gross value is determined at the time of initial bona fide sale, transfer of ownership, or use and this is consistent with the determination of when the fee is to be computed. Further, it is only logical and equitable that the reclamation fee required by these regulations not be considered in the computation of the value, because without including the fee in the calculation of value, the lower percentage rate fee may apply. Severance taxes and royalties are costs of doing business analogous to other costs and must be considered in the determination of the value of the coal.

{62714} 7. One commenter asked whether the regulations required the fee to be paid on clean coal or run-of-mine coal. Section 837.12(a) and (b) of the regulations specify that the fee be paid on each ton of coal produced for sale, transfer, or use and that the fee shall be determined at the time of initial bona fide sale, transfer of ownership, or use by the operator. For example, if the initial transaction is based on the weight of run-of-mine coal

then the reclamation fee must be paid for each ton of run-of-mine coal sold, transferred, or used. If the initial transaction is based on the weight of clean coal, then the reclamation fee must be paid on each ton of clean coal sold, transferred, or used.

8. A number of comments requested that some allowances be made for situations where shipping receipts indicating actual tonnage are not received in time to report production during the calendar quarter in which the fee is due. A suggested solution was that estimated fee payments be permitted with later adjustments made as necessary. No change is made because Section 402(b) of the Act requires payment "no later than thirty days after the end of each calendar quarter."

9. Comments were received requesting that persons operating more than one mine be permitted to submit a single reporting form and a single check to cover all operations. This recommendation was partially accepted. For effective enforcement and administrative purposes, it is necessary to have a separate production report for each mine. A single check covering multiple operations, accompanied by a separate report for each mine, is permitted by the final regulations and should reduce paperwork to some extent.

10. Numerous comments objected to the requirement in Section 837.16 that "any" book or record be made available for inspection and copying to the fee compliance officer. The concern was for overly broad inspection rights and the confidentiality of business information copied by the officer. The regulations have been revised to expressly limit the fee compliance officer's right to inspect such books and records necessary to substantiate the accuracy of reports and payments. This provision makes clear that the standard for such inspection is relevancy. Further, the right to copy price information is limited to those cases where the fee is based on percentage of value. If the flat cents-per-ton fee is paid, price information is not relevant. Customer identity cannot be similarly protected because it may be necessary to verify tonnage with customers. Information copied will be subject to disclosure in accordance with the Freedom of Information Act.

11. One commenter interpreted Section 837.16 to require the maintenance of production records at each mine site and requested that the regulations be altered to permit centralized record collection where a central accounting procedure is used. Section 837.16(b) requires that the fee compliance officer shall have access to the mine in order to verify compliance. Section 837.16(c) requires that the fee compliance officer be afforded access to necessary books and records. Neither paragraph requires that records be kept at a specific location. Records may be kept at centralized locations, and the operator will be required to identify the location of all such records on the Coal Production and Reclamation Fee Report form.

12. Several commenters suggested that operators not be required to maintain voluminous records for seven years. Actual truck receipts need not be kept for the full term, but normal business records which include the information required to be kept by Section 837.16 must be kept. The retention period was shortened from seven years to six years in conformity with the Federal statute of limitations applicable to enforcement actions.

EFFECTIVE DATE

It is the Department's policy in most cases to make final regulations effective 30 days after the date of publication. However, these regulations are effective on the date of publication because section 402 of the Act requires that the fee be paid on coal produced in the fourth calendar quarter of 1977.

INFORMATION COLLECTION PROVISIONS

Section 837.15 prescribes the use of OSM Form 837-1, each calendar quarter, to report information determined by this Department to be necessary to the performance of its responsibilities under the Act. The General Accounting Office, pursuant to 44 U.S.C. 3512, has determined that use of this form does not impose an unreasonable burden on operators, and, accordingly, Section 837.15 is effective on December 8, 1977.

Section 837.16 requires all operators to collect and retain certain information. By publication of these final regulations, this Department has determined that such information is necessary to the performance of its

responsibilities under the Act and must be collected and retained. Accordingly, the requirements of Section 837.16 are adopted, subject only to review by the General Accounting Office, pursuant to 44 U.S.C. 3512, to assure that they impose a minimum burden upon operators in the manner in which the information is proposed to be obtained. This Section 837.16 will be effective January 29, 1978 or on the date of GAO clearance, whichever is earlier.

DRAFTING INFORMATION

The principal authors of these final regulations are George Williams, Surface Mining Task Force, and Edward Clair, Office of the Solicitor, Department of the Interior.

Dated: December 1, 1977.

LEO M. KRULITZ, Solicitor of the Interior.

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In consideration of the comments received and pursuant to the authority of Sections 201(c) and 402 of the Surface Mining Control and Reclamation Act of 1977, 30 CFR Chapter VII is amended by adding a new Part 837, to read as follows:

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

Section

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AUTHORITY: Section 201, Pub.L. 95-87, 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.

FEE COMPLIANCE OFFICER means any person authorized by the Secretary to exercise his authority in matters relating to this part.

{62715} **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, moist and mineral-matter-free, are determined by Parr's formula, page 213, equation 3, D-388 (reapproved 1972), Part 26, 1976 Annual Book of ASTM Standards as follows:

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

where:

Mm=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.

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 (0.90718 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 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.

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 non-commercial 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 during the life of the mine;
- (c) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction; and
- (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 that coal sold, transferred or used during the fourth calendar quarter of 1977. If the operator makes this deduction, he shall attach to his fourth quarter, 1977, OSM form 837-1, 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 \$2x1,000 tonsx0.1= \$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. Example: If the value of a ton of coal is \$1 and the tonnage is 1,000, then \$1x1,000 tonsx0.1= \$1 00, 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, multiply the number of tons produced in a 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 \$4x1,000 tonsx0.02= \$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 Btu's 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 Btu's 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 Btu's per ton, then for every 23 million Btu's 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: $F=(G/C)\times V1$.

(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 Btu's per ton of coal in place.

L =Million Btu's per ton of lignite in place.

G =Gas produced at the wellhead in million Btu's.

V 1=\$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 V 1 in the appropriate formula.

V 2=\$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 V 2 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 837-1, 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 837-1 and check or money order for each coal mine or check or money order for all of the operator's mines represented by individually enclosed OSM Forms 837-1 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 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, transferred 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 necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by the fee compliance officer. If the fee is paid at the maximum rate, the fee compliance officer shall not copy information relative to price. All information copied will be protected in accordance with the Freedom of Information Act.
- (d) The operator shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due.