

FEDERAL REGISTER: 52 FR 39182 (October 20, 1987)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 785

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program;
Requirements for Permits for Special Categories of Mining; Mountaintop Removal Mining

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations in 30 CFR 785.14 applicable to mountaintop removal mining. This action is taken in compliance with the District Court for the District of Columbia's July 15, 1985, ruling in *In re: Permanent Surface Mining Regulation Litigation II No. 79-1144* (D.D.C. 1985). The revised regulation corrects an inadvertent error made during previous rulemaking which omitted certain statutorily required provisions concerning mountaintop removal mining. The omitted provisions included a requirement that the applicant present specific plans for the proposed postmining land use and assurances that such use will meet certain conditions for a variance prior to a regulatory authority's granting of a permit to mine.

EFFECTIVE DATE: November 19, 1987.

FOR FURTHER INFORMATION CONTACT: H. Leonard Richeson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240, telephone (202) 343-5150.

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion of Comments Received and Rule Adopted

III. Procedural Matters

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977 (the Act) *30 U.S.C. 1201* et seq. sets forth the statutory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSMRE has by regulations at 30 CFR Chapter VII implemented or clarified many of these requirements and established corresponding performance standards.

Section 515(c) of the Act permits an exception to the approximate original contour restoration requirement of section 515(b)(3) for mountaintop removal operations which, after reclamation, would be capable of supporting specific postmining land uses. In such operations, instead of restoring the approximate original contour, the operator is permitted to remove all of the overburden and to create a level plateau or a gently rolling contour with no highwall remaining. The regulatory authority may grant a permit of this type if a number of specific conditions are satisfied. Section 515(c)(3)(B) requires the applicant to present specific plans and assurances that the postmining land use will meet these conditions prior to the granting of a permit.

In 1979, OSMRE promulgated regulations implementing section 515(c) (3)(B) at 30 CFR 785.14(c)(1)(iii). That section required any person who intended to conduct mountaintop removal mining to demonstrate in the permit application compliance with the conditions by cross-referencing the requirements for alternative postmining land use in 30 CFR 816.133.

On September 1, 1983 (*48 FR 39892*) OSMRE promulgated final rules amending portions of its permanent regulatory program concerning postmining land uses and variances from approximate original contour. The rules amended include 30 CFR 785.14 and 816.133.

When OSMRE amended these sections, it inadvertently omitted the following requirements of section 515(c)(3)(B) of the Act, which an applicant must satisfy to qualify for a variance:

(B) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be --

- (i) Compatible with adjacent land uses;
- (ii) Obtainable according to data regarding expected need and market;
- (iii) Assured of investment in necessary public facilities;
- (iv) Supported by commitments from public agencies where appropriate;
- (v) Practicable with respect to private financial capability for completion of the proposed use;
- (vi) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and
- (vii) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site * * *.

The omission of these requirements was challenged in *In re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144 (D.D.C. 1985). As a result, the Secretary reviewed the rule and determined it was necessary to amend it to correct this inadvertent error, and so informed the court. *In re: Permanent Surface Mining Regulation Litigation II* (Round III, Secretary's brief at page 142, No. 90 (Dec. 17, 1984)). The court noted the Secretary's decision not to oppose the challenge and his determination to reinstate these provisions through a new rulemaking (July 15, 1985 Memorandum Opinion at p. 132).

OSMRE published a proposed rule on March 25, 1987 (*52 FR 9640*). The proposed rule was open to public comment until June 3, 1987. The final rule, except for minor editorial changes, is the same as the proposed rule. Three comments were received from environmental groups. One actually made comments and the other two wrote a joint letter endorsing the comment made by the one commenter. These comments are addressed below.

III. DISCUSSION OF COMMENTS RECEIVED AND RULES ADOPTED

A. AMENDMENT TO PERMIT REQUIREMENTS FOR MOUNTAINTOP REMOVAL MINING

This final rule amends 30 CFR 785.14 concerning permit requirements for mountaintop removal mining by adding a new paragraph (c)(1)(iii). The new paragraph implements the provisions of section 515(c)(3)(B) of the Act.

The added provisions require an applicant to present specific plans for the proposed postmining land use and to make appropriate assurances concerning this use to the regulatory authority.

Existing paragraphs (c)(1)(iii) and (c)(1)(iv) are redesignated as paragraphs (c)(1)(iv) and (c)(1)(v) respectively. The newly redesignated paragraph (c)(1)(iv), which implements section 515 (c)(3)(c) of the Act, is revised to change the existing term "compatible" to "consistent" to conform with the exact language of section 515 (c)(3)(C). This provision requires the regulatory authority to find that the proposed land use is consistent with adjacent land use plans and programs. No substantive change is intended.

The new rule ensures full implementation of the statutory provisions of section 515 (c)(3)(B) and (C) as they pertain to mountaintop removal mining.

Three commenters objected to OSMRE's proposed insertion of the word "made" to the introductory phrase of 30 CFR 785.14 (c)(1)(iii) which stated that "the applicant has presented specific plans for the proposed postmining land use and made appropriate assurances that such use will be * * *." They pointed out that the Act provides that the applicant "present specific plans for the proposed postmining land use and appropriate assurances that such use will be consistent with statutory requirements". In response to the commenters, OSMRE has deleted the word "made" in the final rule so that final 30 CFR 785.14(c)(1)(iii) of the final rule tracks the statutory language.

B. EFFECT IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

The rules apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. There were no

comments as to whether unique conditions exist in any of these states relating to this rule. This rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

III. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

The information collection requirements of this rule have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned approval number 1029-0040. The information is needed to meet the requirements of section 515(c)(3) of Pub. L. 95-87, and will be used by regulatory authorities when issuing permits for mountaintop removal operations.

Executive Order 12291

The Department of the Interior has examined the final rule according to the criteria of Executive order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that the final rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of the final rule. Based on this EA, OSMRE has made a finding that this rule will not have any significant adverse affect on the quality of the human environment. This EA is on file in the OSMRE Administrative Record at the address listed in the "Addresses" section of the preamble.

LIST OF SUBJECTS IN 30 CFR PART 785

Coal mining, Reporting requirements, Surface mining.

11For the reasons set out in this preamble, Title 30, Chapter VII, Subchapter G of the Code of Federal Regulations, is amended as set forth below.

Date: September 2, 1987.

James E. Cason, Acting Assistant Secretary for Land and Mineral Management.

PART 785 -- REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. The authority citation for Part 985 is revised to read as follows:

Authority: Pub. L. 95-87 (*30 U.S.C. 1201* et seq.) and Pub. L. 100-34 unless otherwise noted.

2. Section 785.14 is amended by redesignating paragraphs (c)(1)(iii) and (c)(1)(iv) as paragraphs (c)(1)(iv) and (c)(1)(v), respectively.

3. Section 785.14 is amended by adding a new paragraph (c)(1)(iii) and revising paragraphs (c)(1)(iv) to read as follows:

SECTION 785.14 - MOUNTAINTOP REMOVAL MINING.

* * * * *

(c) * * *

(1) * * *

(iii) The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be --

(A) Compatible with adjacent land uses;

(B) Obtainable according to data regarding expected need and market;

(C) Assured of investment in necessary public facilities;

(D) Supported by commitments from public agencies where appropriate;

(E) Practicable with respect to private financial capability for completion of the proposed use;

(F) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(G) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(iv) The proposed use would be consistent with adjacent land use and existing State and local land use plans and programs;

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