

FEDERAL REGISTER: 54 FR 989 (January 11, 1989)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 761

Announcement of Public Hearings and Availability of Draft Supplemental Environmental Impact Statement; on Proposed Rule on Valid Existing Rights and Application Prohibitions of Surface Mining Control and Reclamation Act to Underground Mining

ACTION: Notice.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available a draft supplement to the 1979 environmental impact statement (EIS) on OSMRE's permanent program regulations. This draft Supplement addresses proposed revisions to the permanent program rules that implement section 522(e) of the Surface Mining Control and Reclamation Act (SMCRA): A standard for valid existing rights (VER) for mining in areas where Congress has otherwise prohibited mining under section 522(e) of SMCRA, and the applicability of the prohibitions in section 522(e) to subsidence resulting from underground mining. OSMRE is soliciting public comment on this draft Supplement. All substantive comments received within the comment period will be considered in the preparation of the final EIS Supplement. In accordance with the Administrative Procedure Act, any comments on the rule itself should be submitted to the Administrative Record Room (see the Notice of Proposed Rulemaking, 53 FR 52374, December 27, 1988, for full address).

DATES: Written comments: Comments on the draft Supplement must be received no later than 3:30 p.m., March 3, 1989. Comments sent to another address or received after the close of the comment period may not be included in the preparation of the Final EIS Supplement.

Hearings: Hearings on the draft Supplement are scheduled on February 16, 1989. All hearings will start at 9:00 a.m. local time.

ADDRESSES: Written comments: By mail: Catherine Roy, Office of Surface Mining Reclamation and Enforcement, L-5121 (MS-10), 1951 Constitution Avenue, NW., Washington, DC 20240; or

Hand-deliver: Office of Surface Mining Reclamation and Enforcement, Room 5121, 1100 L Street, NW., Washington, DC, weekdays between 8:00 a.m. and 3:30 p.m.

Hearings: Public hearings are scheduled at the following locations:

Denver, CO -- Brooks Towers, Second Floor Conference Room, 1020 15th Street.

Pittsburgh, PA -- Parkway Center Inn, 875 Greentree Road.

Washington, DC -- First Floor Auditorium, South Interior Building, 1951 Constitution Avenue, NW.

St. Louis, MO -- Park Terrace Airport Hilton, 10330 Natural Bridge Road.

FOR FURTHER INFORMATION CONTACT: Single copies of the draft Supplement are available from Catherine Roy, Division of Technical Services (5121-L), OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202 or FTS) 343-5143.

(Requests for information on the rule itself should be addressed to Dr. Annetta Cheek or Mr. Dermot Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone Dr. Cheek at (202 or FTS) 343-4006 and Mr. Winters at (202 or FTS) 343-1928.)

SUPPLEMENTARY INFORMATION:

Pursuant to the National Environmental Policy Act of 1969, as amended, OSMRE has prepared a draft Supplement to the 1979 environmental impact statement on the permanent program regulations. This draft Supplement analyses the potential environmental impacts of a proposed revision to the permanent program rules, 30 CFR Part 761. This proposed rule would affect future surface coal mining operations on lands within National Parks, Wildlife Refuges, Wilderness Areas, Wild and Scenic Rivers, the National System of Trails, and National Recreation Areas. In addition, this proposed rule would affect future surface coal mining operations that would adversely affect places listed on the National Register of Historic Places or any publicly owned park, or operations within a National Forest or within 100 feet of cemeteries and public roads, or within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks. The proposed action and alternatives are as follows:

ALTERNATIVE A1 (NO ACTION): MODIFIED ALL PERMITS/PROHIBITIONS APPLY THROUGH STATE PROGRAMS. -- Under Alternative A1, coal mining in section 522(e) areas would be regulated as it is now. VER is established by the modified all permits standard. An applicant must demonstrate that he/she had obtained, or made a good-faith effort to obtain, all permits necessary for surface coal mining operations prior to August 3, 1977. Under this alternative, almost no one would qualify for VER, and no surface mining or related impacts are expected on any of the prohibited areas identified in section 522(e). Provisions relating to subsidence in section 522(e) areas vary by State and allow a range of subsidence effects from underground mining in the 522(e) areas.

ALTERNATIVE B1: MODIFIED ALL PERMITS/TOTAL PROHIBITION. -- Under Alternative B1, VER for surface coal mining operations (including off-site preparation plants) would be established by the modified all permits standard as described under Alternative A1. Because almost no one would qualify for VER under this standard, there would be virtually no surface mining or off-site preparation plants in 522(e) areas. No underground mining or surface impacts of adjacent underground mining would be allowed in section 522(e) areas.

ALTERNATIVE P1 (PROPOSED ACTION): MODIFIED ALL PERMITS/NO SUBSIDENCE. -- Under Alternative P1, VER for surface coal mining operations (including off-site preparation plants) would be established by the modified all permits standard as described under A1. Because almost no one would qualify for VER under this standard, there would be virtually no surface mining or off-site preparation plants in 522(e) areas. Underground mining would be allowed within protected zones currently delineated in section 522(e), but surface facilities and any measurable subsidence in the reasonably foreseeable future would be prohibited. The mine operator would be allowed to use whatever means are available to meet this performance standard.

ALTERNATIVE P2 (PROPOSED ACTION): MODIFIED ALL PERMITS/NO MATERIAL DAMAGE. -- Alternative P2 is similar to P1, except that under P2, some underground coal mining in 522(e) areas would be allowed, but surface facilities and subsidence that causes material damage to protected lands, features and structures would be prohibited.

ALTERNATIVE E1: MODIFIED ALL PERMITS/PROHIBITIONS NOT APPLICABLE. -- Under Alternative E1, VER would be established using the modified all permits standard. Because virtually no one would qualify for VER, there would be no surface coal mining or off-site preparation plants in 522(e) areas. The prohibitions of section 522(e), however, would not apply to subsidence resulting from underground mining. Operations would still be required either to (a) adopt measures to prevent subsidence from causing material damage, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or (b) adopt measures that provide for planned subsidence.

ALTERNATIVE P3 (PROPOSED ACTION): OWNERSHIP AND AUTHORITY. -- Under Alternative P3, the person claiming VER would need to show the right to extract the coal by the method intended, as determined by the laws of the State in which the property is located. To establish VER for off-site preparation plants, an operator would have to show the right to use the land and have all the permits needed before August 3, 1977.

Most owners of private coal rights in section 522(e) areas would be able to establish VER for underground mining, and the prohibitions of 522(e) would therefore not apply to underground mining. In addition, some operators would be able to establish VER for surface mining within the 522(e) areas. Very few new off-site preparation plants would be established within 522(e) areas. Applicability of the prohibitions of 522(e) to subsidence would be relevant only in those few cases where an operator would not be able to establish VER for the proposed method of mining.

Under this alternative, almost all the non-Federal coal in 522(e) areas could be underground mined, and some could be surface mined.

TAKINGS ALTERNATIVE. -- Under this alternative, an applicant for VER would have to demonstrate that the person has property rights, as defined by the laws of the State in which the property is located, such that, if the mining permit is denied, the denial would effect a taking of property that would entitle the person to just compensation under the fifth and fourteenth amendments to the United States Constitution. Although the effect of the Takings Alternative for VER cannot be quantitatively analyzed in this supplement, the impacts would be similar to those discussed under A1, B1, P1, and P2, except that less land would be subject to the prohibitions.

The analysis considers the general effects on the human environment that might occur as a result of coal mining under the various alternatives. The analysis is based on assumptions concerning where coal is likely to be produced to meet the Nation's energy needs and the level of that production. These will be determined in part by the availability of coal based on the restrictions imposed under each alternative, that is, the standard used to establish VER and how the subsidence restrictions are applied. This has a direct correlation with the effect of coal mining on the environment.

OSMRE will limit oral testimony at these hearings to 10 minutes. Additional time may be granted at the discretion of the presiding officer based on the number of speakers registered. OSMRE encourage speakers to provide a written text of prepared comments, regardless of length, to help ensure that OSMRE has an accurate record.

Persons who wish to speak should sign the register before the hearing begins. After the last registered speaker has been heard, the hearing officer will consider the request of any other person present who wishes to speak. Any person present may speak; however, only one person will be allowed to represent the viewpoints of any organization.

Dated: January 4, 1989.
Brent Wahlquist, Assistant Director, Program Policy.

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