

FEDERAL REGISTER: 51 FR 25718 (July 16, 1986)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 761

Surface Coal Mining and Reclamation Operations: Permanent Regulatory Program;
Areas Unsuited for Surface Coal Mining; Areas Designated by Act of Congress

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its rule prohibiting surface coal mining operations on lands adjoining rivers under study pursuant to the Wild and Scenic Rivers Act (WSRA). This final rule prohibits surface coal mining operations along study rivers or study river corridors as established in any guidelines pursuant to WSRA. If a study river or a study river corridor is not designated as a Wild and Scenic River (or corridor) under WSRA and loses its study status, the protection for such areas under section 522(e)(1) of the Surface Mining Control and Reclamation Act no longer applies.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Stann Chase, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240: telephone 202-343-5587 (commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Discussion of Final Rule.
- III. Discussion of Comments.
- IV. Procedural Matters.

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq., Pub. L. 95-87, sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSMRE has, by regulation (30 CFR Chapter VII), implemented or clarified many of the general requirements of SMCRA and established performance standards to be achieved by different operations. As part of that process, on September 14, 1983 (48 FR 41312), the Secretary of the Interior promulgated final rules amending certain portions of its permanent regulatory program.

In part, the rules affected were those in 30 CFR Part 761, which implemented section 522(e) of SMCRA by setting forth the prohibitions and limitations of mining in areas designated by Congress as unsuitable for all or certain types of surface coal mining operations. More specifically, the rules affected mining along study rivers in the National Wild and Scenic Rivers System designated under section 5(a) of the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. 1276(a). The September 14, 1983, rule prohibited mining within a maximum of one-quarter mile from each bank of a study river. However, the rule was found to be inconsistent with the guidelines established under WSRA, which designate a boundary for protection of study river areas of at least one-quarter mile from each bank of a study river. Therefore, the guidelines established pursuant to WSRA allow a wider corridor of protection along study rivers than the rule promulgated under SMCRA.

The 1983 regulatory revision to the permanent surface mining regulations was challenged in Round III of In re: Permanent Surface Mining Regulation Litigation II, Civil Action No. 79-1144 (D.D.C.). As a result of the Round III challenge, the Secretary reviewed the rule pertaining to study rivers and concluded that it was inconsistent with the guidelines established pursuant to WSRA. Consequently, this final rule establishes under SMCRA the same boundary for study river areas and study river corridors as is established under WSRA. The proposed rule was published August 15, 1985 (50 FR 32962).

II. DISCUSSION OF FINAL RULE

SECTION 761.11 - AREAS WHERE MINING IS PROHIBITED OR LIMITED

SECTION 761.11(a): Wild and Scenic Rivers

On June 10, 1982 (*47 FR 25278*), OSMRE published a notice of proposed rulemaking to amend 30 CFR Chapter VII, Subchapter F. Included in the proposed rule was a revision to 30 CFR 761.11(a), which enumerated certain national systems within whose boundaries surface coal mining operations could not be conducted, subject to valid existing rights. Among those systems was the Wild and Scenic Rivers System. The rule was to implement section 522(e)(1) of SMCRA, which states that "[N]o surface coal mining operations . . . shall be permitted . . . on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress."

The June 10, 1982, proposed rule was based on guidelines proposed by the National Park Service (NPS) and the Forest Service (FS) on January 18, 1981, to establish the boundaries for study river areas in the National Wild and Scenic Rivers System (*46 FR 9148*). The objective of OSMRE's rule was to establish those areas in which mining would be prohibited along study rivers. In the final rule, OSMRE adopted the proposed NPS/FS standard that a study corridor was "a corridor extending not more than one-quarter mile from each bank for the length of the segment being studied." This was in keeping with the NPS/FS proposed phrase that a study area is "normally defined as an area extending the length of the study segment and extending in width one-quarter mile from each bank of the river." However, the final NPS/FS guidelines were published with revised wording in which the phrase "normally defined as" had been replaced with the phrase "as a minimum," resulting in the previous inconsistency (*47 FR 39456*, Sept. 7, 1982). OSMRE is now revising Section 761.11(a) to be consistent with the guidelines established pursuant to WSRA. The specific boundary limits of a study river corridor are not stated in the final rule, to prevent future conflicts in the event that the guidelines for establishing study river corridors and their boundary limits under WSRA are changed at a later date.

III. DISCUSSION OF COMMENTS

One commenter advocated including in the final rule a specific cross-reference to the NPS/FS guidelines. OSMRE, however, intentionally used the phrase "as established in any guidelines pursuant to that Act" in order to avoid future inconsistencies, such as occurred in OSMRE's 1983 rule, in the event that the procedure for establishing study river corridors and their boundary is changed in the future. The present NPS/FS guidelines are fully identified in this preamble.

Another commenter wanted it made clear that prohibitions or limitations placed on surface coal mining operations within the National Wild and Scenic Rivers System, including study river corridors, are subject to valid existing rights. Section 522(e) of SMCRA and the introductory paragraph of Section 761.11, both of which address mining in areas within the system, state specifically that the prohibition of mining in those areas is subject to valid existing rights.

The same commenter stated that prohibitions or limitations on mining in those areas should apply only to the surface impacts of mining on lands formally included in a study river area or river system and not to operations on lands adjacent to those areas except as they are subject to other applicable State and Federal laws, and that those mining operations cannot legally be further regulated under WSRA or SMCRA. The commenter is correct that the limitations and prohibitions under WSRA and section 522(e)(1) of SMCRA will apply only in the areas specified in the rule. However, the rule will have no effect on the application of the provisions of SMCRA to operations outside of these areas.

Also according to that commenter, the following matters pertaining to the National Wild and Scenic Rivers System guidelines need clarification or revision: The determination of adequate compensation for lands added to the system, allowance for completion of existing mining operations as lands are added to the system, and establishment of fixed and maximum boundary limits. Inasmuch as the guidelines were promulgated by the National Park Service and the Forest Service, those matters are outside the jurisdiction of OSMRE.

The remainder of the commenters expressed their approval of the proposed rule.

EFFECT IN FEDERAL PROGRAM STATES

The final rule applies, 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.

IV. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under *44 U.S.C. 3501* et seq.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601* et seq.).

The change in this rule will have a minor economic effect because the only additional area within which mining is prohibited would be created in those situations where the boundary of a study river corridor set under the Wild and Scenic Rivers Act is greater than one-quarter mile from the river bank. Under the OSMRE September 14, 1983, rule, mining would have been allowed in the area between that one-quarter mile boundary and the boundary set by the NPS/FS.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts on the human environment of this final rule and has made a finding that the rule would not have a significant impact under Section 102(2)(C) of the National Environmental Policy Act of 1969, *42 U.S.C. 4332(C)*. The EA and finding of no significant impact are on file in the OSMRE Administrative Record, Room 5314-A, 1100 L Street, NW., Washington, DC.

LIST OF SUBJECTS IN 30 CFR PART 761

Coal mining, Historic preservation, National forests, National parks, National trails system, National wild and scenic rivers system, Surface mining, Underground mining, Wilderness areas, Wildlife refuges.

Accordingly, 30 CFR Part 761 is amended as set forth herein.

Dated: June 19, 1986.

J. Steven Griles, Assistant Secretary for Land and Minerals Management.

PART 761 -- AREAS DESIGNATED BY ACT OF CONGRESS

1. The authority citation for Part 761 is revised to read as follows:

Authority: Pub. L. 95-87 (*30 U.S.C. 1201* et seq.).

2. Section 761.11 is amended by revising paragraph (a) to read as follows:

SECTION 761.11 - AREAS WHERE MINING IS PROHIBITED OR LIMITED.

* * * * *

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (*16 U.S.C. 1276(a)*) or study rivers study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress.

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