

Executive Order 12630

In accordance with Executive Order 12630 (53 FR 8859, March 18, 1988) and the Attorney General's Guidelines For the Evaluation of Risk and Avoidance of Unanticipated Takings issued June 30, 1988, the Department has prepared a takings implication assessment (TIA). The TIA is available for inspection in the Administrative Record, Room 5215, 1100 L Street, NW., Washington, DC.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of the Act to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Agency Approval

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSMRE must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSMRE will obtain the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor, on the final rule to be promulgated following analysis of public comments received on this proposal.

Authors

The authors of this regulation are Dr. Annetta Cheek, Division of Technical Services; and Mr. Dermot Winters, Regulatory Development and Issues Management Staff, Office of the Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone Dr. Cheek at (202) 343-4006; Telephone Mr. Winters at (202) 343-1928 (Commercial or FTS).

List of Subjects in 30 CFR Part 761

Coal mining, Historic preservation, Monuments and memorials, National forests, National parks, Surface mining, Underground mining, Wildlife refuges.

Accordingly, it is proposed that 30 CFR Part 761 be amended as set forth below.

Date: May 6, 1988.

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

SUBCHAPTER F—AREAS UNSUITABLE FOR MINING**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.*), and Pub. L. 100-34.

2. The definition of valid existing rights in § 761.5 is revised to read as follows:

§ 761.5 Definitions.

* * * * *

Valid existing rights means that a person has a right, subject to the requirements of the Act, to conduct surface coal mining operations on lands where, in the absence of that right, such operations would be prohibited by section 522(e) of the Act. Valid existing rights shall be established by application of the following standards.

(a) Except as provided in paragraph (b) of this definition, to establish valid existing rights, a person intending to conduct surface coal mining operations which will extract coal on lands protected by section 522(e) of the Act shall demonstrate a legally binding conveyance, lease, deed, contract, or other document which establishes a right to the coal resource as of August 3, 1977, or as of the date of the prohibitions became effective for lands that come under the protection of section 522(e) of the Act at a subsequent date. Interpretation of the terms of the documents relied upon to establish the rights to which this paragraph applies shall ordinarily be based upon applicable State statutory or case law concerning interpretation of documents conveying such rights. In addition, a person intending to conduct surface coal mining operations on lands protected by section 522(e) of the Act shall demonstrate that one of the following standards is met.

(1) The coal is both needed for, and immediately adjacent to, a validly authorized surface coal mining operation existing as of August 3, 1977, or as of the date the section 522(e) prohibitions became effective; or

Option 1: Ownership and Authority Option

(2) The person can demonstrate that, as of the date the section 522(e)

prohibitions became effective, he had, as determined by the laws of the State in which the mining would occur, (i) the right to extract the coal by the method he intends to use; or (ii) for preparation plants and other surface coal mining operations not involving the extraction of coal, the authority to operate the plants or conduct the operations.

Option 2: Good Faith-All Permits Option

(2) The person had, or had made a good faith effort to obtain, all necessary permits prior to the date the section 522(e) prohibitions became effective.

[End of option 2]

(b) For haul roads, valid existing rights means—

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or as of the date the section 522(e) prohibitions became effective, or

(2) Any other road in existence as of August 3, 1977, or as of the date the section 522(e) prohibitions became effective.

3. Section 761.11 is amended by revising paragraph (h) to read as follows:

§ 761.11 Areas where mining is prohibited or limited.

* * * * *

Option 1: Section 522(e) Prohibitions Apply to Operations Which Are Expected to Result in Subsidence Causing Material Damage Within the Protected Areas

(h) *Provided*, with regard to subsidence, this section applies to the extent such subsidence results in, or could reasonably be expected to result in, material damage to the land surface, or the protected features, facilities or structures. Material damage means a functional impairment of the surface, features, facilities, or structures.

* * * * *

Option 2: Section 522(e) Prohibitions Apply To Underground Coal Extraction Operations Which are Expected to Cause Subsidence Within the Protected Areas

(h) *Provided*, with regard to subsidence, this section applies to any subsidence which affects, or could reasonably be expected to affect, the land surface, or the protected features, facilities or structures.

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DEPARTMENT OF THE INTERIOR**Departmental Policy Pertaining to the Exercise of Valid Existing Rights in Areas Covered by Section 522(e)(1) of the Surface Mining Control and Reclamation Act of 1977**

AGENCY: Department of the Interior.

ACTION: Notice of Statement of Policy.

SUMMARY: Section 522(e)(1) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et. seq.*) prohibits surface coal mining operations in certain areas, subject to valid existing rights and except for operations which existed on August 3, 1977. The policy outlined below specifically addresses situations where valid existing rights exist and are about to be exercised in an area that is protected under section 522(e)(1). This policy is also reflected and discussed in a proposed rulemaking

issued on this date by the Office of Surface Mining Reclamation and Enforcement, Department of the Interior, that addresses areas unsuitable for coal mining and defines valid existing rights. That rulemaking contains detailed background information and discussions of the applicable statutory provisions and issues that relate to this policy. The policy reads as follows.

Policy To Prevent Coal Mining in the Areas Covered by Section 522(e)(1) of the Surface Mining Control and Reclamation Act

If a person initiates action to exercise valid existing rights under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 to conduct surface coal mining operations 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 National 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, subject to appropriation the Secretary of the Interior will use available authorities to seek to acquire such rights through exchange, negotiated purchase or condemnation.

FOR FURTHER INFORMATION CONTACT:

Barbara Wyman, Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks, 18th and C Streets NW., Washington, DC 20240; Telephone: 202-343-9211.

Date: September 22, 1988.

Earl E. Gjelde,

Under Secretary of the Interior.

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Federal Register

**Tuesday
December 27, 1988**

Part V

Department of Education

**Institutional Quality Control Pilot
Program; Notice of Deadline Date for
Participation and Updating of Selection
Criteria**

Project 16981

Part V

Department of
Education

Institution Quality Control Pilot
Program: Notice of Deadline Date for
Participation and Updating of Selection
Criteria

DEPARTMENT OF EDUCATION

Institutional Quality Control Pilot Project

AGENCY: Department of Education.

ACTION: Notice of deadline date for participation in the Institutional Quality Control Pilot Project and updating of selection criteria.

SUMMARY: The Secretary issues a deadline date for the submission of a written notice by an institution that it wishes to participate in the Institutional Quality Control Pilot Project (Pilot Project). The criteria used to select institutions for the Pilot Project were published in the *Federal Register* of December 1, 1986, 51 FR 43334-43335. However, the Secretary is updating certain information contained in those selection criteria.

The Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant], and Stafford Loan (formerly Guaranteed Student Loan) Programs.

EFFECTIVE DATE: These selection criteria take effect either on or before February 10, 1989 or later if Congress takes certain adjournments. If you want to know the effective date of these criteria, call or write the Department of Education contact person. These selection criteria apply to the award year beginning July 1, 1989 and ending June 30, 1990.

DEADLINE DATE FOR REQUEST TO PARTICIPATE IN PILOT PROJECT: There are no application forms from the Department of Education that must be used to apply to participate in the Pilot Project. An institution applies to participate in the Pilot Project by sending a written notice to the Secretary of its request to participate. An institution must submit its request to participate in the Pilot Project by February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Mroz, Division of Quality Assurance, U.S. Department of Education, 400 Maryland Avenue SW., [Regional Office Building 3, Room 5042], Washington, DC 20202-5243. Telephone Number: (202) 732-4439.

SUPPLEMENTARY INFORMATION: The Secretary has extended the Pilot Project through the end of the 1990-91 award year. An institution that is selected to

participate in the Pilot Project is exempt, for the period of its participation in the Pilot Project, from selected requirements set forth in the verification regulations of Subpart E of the Student Assistance General Provisions Regulations, 34 CFR Part 668.

The Secretary published Final Selection Criteria for participation in the Pilot Project in the *Federal Register* of December 1, 1986, 51 FR 43334-43335. When the Secretary published the Final Selection Criteria he indicated that to administer the Pilot Project properly, the number of institutions participating in the Pilot Project should not exceed 102. Currently there are 60 institutions participating in the Pilot Project; therefore, if all 60 of the current participants choose to remain in the Pilot Project, the Secretary will select no more than 42 new institutions.

The selection criteria indicated that selected institutions should have experience in the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan (now Stafford Loan) Programs and in dealing with a significant number of students and Federal dollars in all those programs. Accordingly, the selection criteria required that an institution be a participant in the above programs during the current award year (the 1986-87 award year) and have participated in all five programs during the preceding two award years (the 1984-85 and 1985-86 award years).

The Secretary is keeping those criteria but updating the award years. Therefore, for institutions that wish to participate in the Pilot Project for the first time during the 1989-90 award year, they must be participating in the five programs during the 1986-89 award year, and have participated in all five programs during the 1986-87 and 1987-88 award years.

The Secretary encourages participation in the Pilot Project by junior and community colleges, and by two- and four-year colleges serving predominantly low-income populations, provided that these institutions otherwise qualify under the Final Selection Criteria. Any institution applying to participate should have a strong interest in increasing the quality of its management and award of student financial assistance dollars.

The Secretary is republishing only Final Selection Criteria I and II. The Secretary will select all institutions that meet the selection criteria unless more than 42 institutions apply. In the event

that more than 42 institutions apply to participate in the Pilot Project, the Secretary will select applicants on the basis of additional criteria published under Final Selection Criterion III in the *Federal Register* of December 1, 1986.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. However, the changes to the criteria are technical in nature and establish no new substantive policy. Therefore, pursuant to 5 U.S.C. 553(b)(A) the Secretary finds that publication of proposed selection criteria is unnecessary and contrary to the public interest.

Final Selection Criteria I and II

I. In order to be selected to participate in the Pilot Project, an institution must:

1. Participate in the Pell Grant, campus-based [Perkins Loan (formerly National Direct Student Loan), College Work-Study and Supplemental Educational Opportunity Grant] and Stafford Loan (formerly Guaranteed Student Loan) Programs during the 1986-89 award year and have participated in all five programs during the 1986-87 and 1987-88 award years;
2. Have had, in the aggregate, at least 2000 Pell Grant and campus-based program recipients during the 1986-87 award year;
3. Have awarded, in the aggregate, at least \$2 million under the Pell Grant and campus-based programs in the 1986-87 award year; and
4. Have submitted and had approved by the Secretary its most recent audit report in which the reported liability was less than \$150,000.

II. If not more than 42 applicants meet the above criteria, the Secretary selects all the applicants who meet the criteria to participate in the Pilot Project.

(Catalog of Federal Domestic Assistance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program; Number 84.032, Guaranteed Student Loan Program; Number 84.033, College Work-Study Program; Number 84.038, Perkins Loan Program; Number 84.063, Pell Grant Program.)

Authority: 20 U.S.C. 1070 *et seq.*

Dated: November 30, 1988.

Lauro F. Cavazos,

Secretary of Education.

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