§ 761.200 Interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress.

OSM has adopted the following interpretation of rules promulgated in part 761.

(a) Interpretation of § 761.11—Areas where mining is prohibited or limited. Subsidence due to underground coal mining is not included in the definition of surface coal mining operations under section 701(28) of the Act and § 700.5 of this chapter and therefore is not prohibited in areas protected under section 522(e) of the Act.

(b) [Reserved]

[64 FR 70836, Dec. 17, 1999]

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.
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762.15 Exploration on land designated as unsuitable for surface coal mining operations.

AUTHORITY: 30 U.S.C. 1201 et seq.

SOURCE: 48 FR 41350, Sept. 14, 1983, unless otherwise noted.

§ 762.1 Scope.

This part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

§ 762.4 Responsibility.

The regulatory authority or OSM shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

§ 762.5 Definitions.

For purposes of this part:

land, structure, or feature verify the location.

(1) The request for location verification must:

(i) Include relevant portions of the permit application.

(ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(iii) Specify that the regulatory authority will not necessarily consider a response received after the comment period provided under paragraph (c)(1)(ii) of this section.

(2) If the agency does not respond in a timely manner, the regulatory authority may make the necessary determination based on available information.

(d) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places. (1) If the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the regulatory authority must request that the Federal, State, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must:

(i) Include a copy of applicable parts of the permit application.

(ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(iii) State that failure to interpose an objection within the time specified under paragraph (d)(1)(ii) of this section will constitute approval of the proposed operation.

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(ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(iii) State that failure to interpose an objection within the time specified under paragraph (d)(1)(ii) of this section will constitute approval of the proposed operation.

(2) If the agency does not respond in a timely manner, the regulatory authority may make the necessary determination based on available information.
Fragile lands means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

Historic lands means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments.

§ 762.11 Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this chapter or an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will—

1. Be incompatible with existing State or local land use plans or programs;
2. Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
3. Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or
4. Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

§ 762.12 Additional criteria.

(a) A State regulatory authority may establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining operations. Such criteria shall be approved pursuant to subchapter C of this chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unsuitable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the