

basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

§ 762.13 Land exempt from designation as unsuitable for surface coal mining operations.

The requirements of this part do not apply to—

(a) Lands on which surface coal mining operations were being conducted on the date of enactment of the Act;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

§ 762.14 Applicability to lands designated as unsuitable by Congress.

Pursuant to appropriate petitions, lands listed in § 761.11 of this chapter are subject to designation as unsuitable for all or certain types of surface coal mining operations under this part and parts 764 and 769 of this chapter.

[64 FR 70837, Dec. 17, 1999]

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

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of the Act and regulations of this subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, any approved State or Federal program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the regulatory authority under part 772 of this chapter, to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

[48 FR 41350, Sept. 14, 1983. Redesignated at 64 FR 70837, Dec. 17, 1999]

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

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AUTHORITY: 30 U.S.C. 1201 *et seq.* and Pub. L. 100-34.

SOURCE: 48 FR 41351, Sept. 14, 1983, unless otherwise noted.

§ 764.1 Scope.

This part establishes minimum procedures and standards to be included in each approved State program for designating non-Federal and non-Indian lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

§ 764.10 Information collection.

The information collection requirements contained in §§ 764.21 and 764.25(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0030. The information required in § 764.21 is necessary to allow the regulatory authority to develop a data base and inventory system to evaluate whether reclamation is feasible in areas covered by petitions. The information required in § 764.25(b) is necessary to allow the regulatory authority to determine, when a permit application is filed, whether it includes any areas designated as unsuitable for surface coal mining.

§ 764.11 General process requirements.

Each State shall establish a process enabling objective decisions to be made on which, if any, land areas of the State are unsuitable for all or certain

types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in this part.

§ 764.13 Petitions.

(a) *Right to petition.* Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this Action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an “injury in fact” test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) *Designation.* The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner’s name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(iii) An identification of the petitioner’s interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner’s interests; and

(v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of sections 522(a) (2) and (3) of the Act, assuming that contemporary mining

practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner’s interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(2) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

(c) *Termination.* The regulatory authority shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include—

(i) The petitioner’s name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(iii) An identification of the petitioner’s interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner’s interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously

and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(A) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in § 762.11(b) of this chapter;

(B) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in § 762.11(a) of this chapter; or

(C) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in § 762.11(b) of this chapter;

(2) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

§ 764.15 Initial processing, record-keeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether the petition is complete under § 764.13 (b) or (c). Complete, for a designation or termination petition, means that the information required under § 764.13 (b) or (c) has been provided.

(2) The regulatory authority shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the regulatory authority finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) If the regulatory authority determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of § 764.13(a), it shall return the petition

to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the regulatory authority may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) The regulatory authority shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(6) The regulatory authority may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the regulatory authority may issue a decision on a complete and accurate permit application and shall inform the petitioner why the regulatory authority cannot consider the part of the petition pertaining to the proposed permit area.

(b)(1) Promptly after a petition is received, the regulatory authority shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property. Proper notice to persons with

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an ownership interest of record in the property shall comply with the requirements of applicable State law.

(2) Promptly after the determination that a petition is complete, the regulatory authority shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices.

(c) Until three days before the regulatory authority holds a hearing under § 764.17, any person may intervene in the proceeding by filing allegations of facts describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(d) Beginning from the date a petition is filed, the regulatory authority shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the regulatory authority. The regulatory authority shall make the record available to the public for inspection free of charge and for copying at reasonable cost during all normal hours at the main office of the regulatory authority. The regulatory authority shall also maintain information at or near the area in which the petitioned land is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

[48 FR 41351, Sept. 14, 1983, as amended at 52 FR 49323, 49324, Dec. 30, 1987]

§ 764.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory authority may subpoena witnesses as necessary. The hearing may be conducted with cross-

examination of expert witnesses only. A record of the hearing shall be made and preserved according to State law. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by the regulatory authority in its decision on the petition.

(b)(1) The regulatory authority shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by the regulatory authority to have a property interest in the petitioned area. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(c) The regulatory authority shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The regulatory authority may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

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(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 764.19 Decision.

(a) In reaching its decision, the regulatory authority shall use—

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under § 764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under section 526(e) of the Act and § 775.13 of this chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the regulatory authority shall be considered and included in the record of the administrative proceeding.

§ 764.21 Data base and inventory system requirements.

(a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in § 762.11 of this chapter, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer,

and the agency administering section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 *et seq.*).

(c) The regulatory authority shall add to the data base and inventory system information—

(1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by § 764.17(e); and

(2) That becomes available from petitions, publications, experiments, permit application, mining and reclamation operations, and other sources.

§ 764.23 Public information.

The regulatory authority shall:

(a) Make the information in the data base and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

§ 764.25 Regulatory authority responsibility for implementation.

(a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to part 761, 762, or 764 of this chapter.

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting

proprietary information on the chemical and physical properties of the coal.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

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AUTHORITY: 30 U.S.C. 1201 *et seq.* and Pub. L. 100-34.

SOURCE: 48 FR 41354, Sept. 14, 1983, unless otherwise noted.

§ 769.1 Scope.

This part establishes minimum procedures and standards for designating Federal lands as unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition.

§ 769.10 Information collection.

The information collection requirements in this part do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

§ 769.11 Who may submit a petition.

Any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands may petition the Secretary to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. This right does not apply to areas set aside from surface coal mining operations under laws other than the Act. For the purpose of this section, a person having an inter-

est which is or may be adversely affected must demonstrate how he or she meets an “injury in fact” test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

§ 769.12 Where to submit petitions.

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Director of the OSM Field Office responsible for that area where the Federal lands are located.

§ 769.13 Contents of petitions.

(a) *Designation.* The only information that a petitioner need provide to designate lands is that required under § 764.13(b) of this chapter.

(b) *Termination.* The only information that a petitioner need provide to terminate a designation is that required by § 764.13(c) of this chapter.

§ 769.14 Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, OSMRE shall determine whether the petition is complete and not frivolous. OSMRE may request other supplementary information that is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSMRE's determination that the petition is complete for further processing.

(2) *Complete*, (i) for a designation petition, means that (A) all information required under § 764.13(b) of this chapter has been provided and (B) the information submitted by the petitioner contains significant new allegations of fact and supporting evidence not considered in any previous unsuccessful petition of Federal lands review conducted under Section 522(b) of the Act, that tends to establish that the lands are unsuitable for surface coal mining operations; and (ii) for a termination petition, means that all information required under § 764.13(c) has been provided.

(3) *Frivolous*, for a designation or termination petition, means that: