

## § 761.12

### § 761.12 Exception for existing operations.

The prohibitions and limitations of § 761.11 do not apply to:

(a) Surface coal mining operations for which a valid permit, issued under Subchapter G of this chapter or an approved State regulatory program, exists when the land comes under the protection of § 761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of § 761.11.

(b) With respect to operations subject to Subchapter B of this chapter, lands upon which validly authorized surface coal mining operations exist when the land comes under the protection of 30 U.S.C. 1272(e) or § 761.11.

[64 FR 70833, Dec. 17, 1999]

### § 761.13 Procedures for compatibility findings for surface coal mining operations on Federal lands in national forests.

(a) If you intend to rely upon the exception provided in § 761.11(b) to conduct surface coal mining operations on Federal lands within a national forest, you must request that we obtain the Secretarial findings required by § 761.11(b).

(b) You may submit a request to us before preparing and submitting an application for a permit or boundary revision. If you do, you must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in § 761.5. You must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. We may request that you provide any additional information that we determine is needed to make the required findings.

(c) When a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes Federal lands within a national forest, the regulatory authority may not issue the permit or approve the boundary revision before

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the Secretary makes the findings required by § 761.11(b).

[64 FR 70833, Dec. 17, 1999]

### § 761.14 Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.

(a) This section does not apply to:

(1) Lands for which a person has valid existing rights, as determined under § 761.16.

(2) Lands within the scope of the exception for existing operations in § 761.12.

(3) Access or haul roads that join a public road, as described in § 761.11(d)(1).

(b) You must obtain any necessary approvals from the authority with jurisdiction over the road if you propose to:

(1) Relocate a public road;

(2) Close a public road; or

(3) Conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

(c) Before approving an action proposed under paragraph (b) of this section, the regulatory authority, or a public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the authority must:

(1) Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;

(2) If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and

(3) Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the authority must make this finding within 30 days after the hearing. If no hearing was held, the authority must make this finding within 30 days after the end of the public comment period.

[64 FR 70833, Dec. 17, 1999]