**Section 1761.16 Submission and Processing of Requests for Valid Existing Rights Determinations**

a) Basic framework for valid existing rights determinations. The following table identifies the agency responsible for making a valid existing rights determination and the definition that it must use, based upon which subsection of Section 1761.11 applies and whether the request includes Federal lands.

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| --- | --- | --- | --- | --- |
| Subsection of 62 Ill. Adm. Code 1761.11 that provides protection | Protected feature | Type of land to which request pertains | Agency responsible for determination | Applicable definition of valid existing rights |
|  |  |  |  |  |
| (a) | National parks, wildlife refuges, etc. | Federal | OSM | Federal1 |
| (a) | National parks, wildlife refuges, etc. | Non-Federal | Department | Federal1 |
| (b) | Federal lands in national forest3 | Federal | OSM | Federal1 |
| (c) | Public parks and historic places | Does not matter | Department | Regulatory program2 |
| (d) | Public roads | Does not matter | Department | Regulatory program2 |
| (e) | Occupied dwellings | Does not matter | Department | Regulatory program2 |
| (f) | Schools, churches, parks, etc. | Does not matter | Department | Regulatory program2 |
| (g) | Cemeteries | Does not matter | Department | Regulatory program2 |

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| 1 Definition in 30 CFR 761.5. |
| 2 Definition in Section 1761.5. |
| 3 Neither 30 USC 1272(e) nor 30 CFR 761.11 provides special protection for non-Federal lands within national forests. Therefore, this table does not include a category for those lands. |

When the Department is the agency responsible for valid existing rights determinations, the procedures under subsections (b) through (g) of this Section apply.

b) The applicant or permittee must submit a request for a valid existing rights determination to the Department if it intends to conduct surface coal mining operations on the basis of valid existing rights under Section 1761.11 or wishes to confirm the right to do so. Such request may be submitted before preparing and submitting an application for a permit or boundary revision for the land.

1) Requirements for property rights demonstration. The applicant or permittee must provide a property rights demonstration under Section 1761.5(a) if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in Section 1761.5(b). This demonstration must include the following items:

A) A legal description of the land to which the request pertains.

B) Complete documentation of the character and extent of the current interests in the surface and mineral estates of the land to which the request pertains.

C) A complete chain of title for the surface and mineral estates of the land to which the request pertains.

D) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.

E) A description of the type and extent of surface coal mining operations that the applicant or permittee claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with State property law.

F) Complete documentation of the nature and ownership, as of the date that the land came under the protection of Section 1761.11, of all property rights for the surface and mineral estates of the land to which the request pertains.

G) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.

H) If the coal interests have been severed from other property interests, documentation that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the applicant's or permittee's property rights claims.

I) Any comments received in response to the notification provided under subsection (b)(1)(H) of this Section.

2) Requirements for good faith/all permits standard. If the request relies upon the good faith/all permits standard in Section 1761.5(b)(1) of the definition of valid existing rights, the information required under subsection (b)(1) of this Section must be submitted. The following information about permits, licenses and authorizations for surface coal mining operations on the land to which the request pertains must also be submitted:

A) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant, permittee or predecessor in interest obtained before the land came under the protection of Section 1761.11.

B) Application dates and identification numbers for any permits, licenses, and authorizations for which the applicant, permittee or a predecessor in interest submitted an application before the land came under the protection of Section 1761.11.

C) An explanation of any other good faith effort that the applicant, permittee or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of Section 1761.11.

3) Requirements for needed for and adjacent standard. If the request relies upon the needed for and adjacent standard in subsection (b)(2) of the definition of valid existing rights in Section 1761.5, the applicant or permittee must submit the information required under subsection (b)(1) of this Section. In addition, the applicant or permittee must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 1761.11.

4) Requirements for standards for mine roads. If the request relies upon one of the standards for roads in subsections (c)(1) through (c)(3) of the definition of valid existing rights in Section 1761.5, satisfactory documentation must be submitted that:

A) The road existed when the land upon which it is located came under the protection of Section 1761.11 and the applicant or permittee has a legal right to use the road for surface coal mining operations;

B) A properly recorded right of way or easement for a road in the location existed when the land came under the protection of Section 1761.11, and, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant or permittee has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

C) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 1761.11.

c) Initial review of request.

1) The Department must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection (b) of this Section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2) If the request does not include all applicable components of the submission requirements of subsection (b) of this Section, the Department must give notice of such and establish a reasonable time for submission of the missing information.

3) When the request includes all applicable components of the submission requirements of subsection (b) of this Section, the Department must implement the notice and comment requirements of subsection (d) of this Section.

4) If information that the Department requests under subsection (c)(2) of this Section is not provided within the time specified or as subsequently extended, the Department must issue a determination that the applicant or permittee has not demonstrated valid existing rights, as provided in subsection (e)(4) of this Section.

d) Notice and comment requirements and procedures.

1) When the request satisfies the completeness requirements of subsection (c) of this Section, the applicant or permittee must publish a notice in a newspaper of general circulation in the county in which the land is located and provide the Department with a copy of the published notice. This notice must invite comment on the merits of the request. The Federal Office of Surface Mining will publish a similar notice in the Federal Register if the request involves Federal lands within an area listed in Section 1761.11(a) or (b). Each notice must include:

A) The location of the land to which the request pertains.

B) A description of the type of surface coal mining operations planned.

C) A reference to and brief description of the applicable standards under the definition of valid existing rights in Section 1761.5.

i) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in subsection (b) of the definition of valid existing rights in Section 1761.5, the notice also must include a description of the property rights that are claimed and the basis for such claim.

ii) If the request relies upon the standard in subsection (c)(1) of the definition of valid existing rights in Section 1761.5, the notice also must include a description of the basis for the applicant's or permittee's claim that the road existed when the land came under the protection of Section 1761.11. In addition, the notice must include a description of the basis for the applicant's or permittee's claim that it has a legal right to use that road for surface coal mining operations.

iii) If the request relies upon the standard in subsection (c)(2) of the definition of valid existing rights in Section 1761.5, the notice also must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 1761.11. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant or permittee has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

D) If the request relies upon one or more of the standards in subsections (b), (c)(1) and (c)(2) of the definition of valid existing rights in Section 1761.5, a statement that the Department will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by subsection (d)(3) of this Section, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement or other documents that form the basis of the applicant or permittee's claim.

E) A description of the procedures that the Department will follow in processing the request.

F) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

G) A statement that interested persons may obtain a 30 day extension of the comment period upon request.

H) The name and address of the Department's office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

2) The Department must promptly provide a copy of the notice required under subsection (d)(1) of this Section to:

A) All reasonably locatable owners of surface and mineral estates in the land included in the request.

B) The owner of the feature causing the land to come under the protection of Section 1761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of Section 1761.11. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

3) The letter transmitting the notice required under subsection (d)(2) of this Section must provide a 30 day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Department may grant additional time for good cause upon request. The Department need not consider comments received after the closing date of that comment period.

e) How a decision will be made.

1) The Department must review the materials submitted under subsection (b) of this Section, comments received under subsection (d) of this Section and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Department must notify the applicant or permittee in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the Department deems necessary to remedy the inadequacy.

2) Once the record is complete and adequate, the Department must determine whether the applicant or permittee has demonstrated valid existing rights. The decision document must explain how all applicable elements of the definition of valid existing rights in Section 1761.5 have or have not been satisfied. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

3) Impact of property rights disagreements. This subsection (e)(3) applies only when the request relies upon one or more of the standards in subsections (b), (c)(1) and (c)(2) of the definition of valid existing rights in Section 1761.5.

A) The Department must issue a determination that the applicant or permittee has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The Department will make this determination without prejudice, meaning that the applicant or permittee may refile the request once the property rights dispute is finally adjudicated. This subsection (e)(3)(A) applies only to situations in which legal action has been initiated as of the closing date of the comment period under subsection (d)(1) or (d)(3) of this Section.

B) If the record indicates disagreement as to the accuracy of the property rights claims, but such disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the Department must evaluate the merits of the information in the record and determine whether the applicant or permittee has demonstrated that the requisite property rights exist under subsection (a), (c)(1) or (c)(2) of the definition of valid existing rights in Section 1761.5, as appropriate. The Department must then proceed with the decision process under subsection (e)(2) of this Section.

4) The Department must issue a determination that valid existing rights has not been demonstrated if information that the Department requests under subsection (c)(2) or (e)(1) of this Section is not submitted within the time specified or as subsequently extended. The Department will make this determination without prejudice, meaning that a revised request may be refiled at any time.

5) After making a determination, the Department must:

A) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant or permittee, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of Section 1761.11, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 1761.11.

B) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. The applicant or permittee must publish this notice and provide a copy of the published notice to the Department. The Federal Office of Surface Mining will publish the determination, together with an explanation of appeal rights and procedures, in the Federal Register if the request includes Federal lands within an area listed in Section 1761.11(a) or (b).

f) Administrative and judicial review. A determination that an applicant or permittee has or does not have valid existing rights is subject to administrative and judicial review under 62 Ill. Adm. Code 1847.3.

g) Availability of records. The Department must make a copy of a request subject to notice and comment under subsection (d) of this Section available to the public in the same manner as the Department must make permit applications available to the public under 62 Ill. Adm. Code 1773.13(d). In addition, the Department must make records associated with that request, and any subsequent determination under subsection (e) of this Section, available to the public in accordance with the requirements and procedures of 62 Ill. Adm. Code 1840.14.

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