



U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Subject: 522(b) Federal Lands Review

Approval: *Harry M. Long* Title: Director

1. Purpose. This directive establishes the policy of the Office of Surface Mining Reclamation and Enforcement (OSM) for conducting and documenting the non-delegable responsibilities for the Federal lands review under section 522(b) of the Surface Mining Control and Reclamation Act (SMCRA).

2. Summary. This directive consolidates agency policy and procedures for conducting and documenting the results of the review of Federal lands, required under section 522(b) of SMCRA, to determine whether they are unsuitable for all or certain types of surface coal mining operations.

3. Definitions.

a. Federal permit. A permit issued under SMCRA by OSM in its capacity as the regulatory authority on Federal lands (in States with limited or no cooperative agreements to regulate mining on such lands) or under a Federal program for a State. For this directive, the term "Federal permit" also includes permits issued by OSM for operations on Federal lands where OSM and the State have dual permitting responsibilities.

b. Federal permitting entity (FPE). The OSM organizational unit with responsibility for receiving and processing applications and other materials related to Federal permits, i.e., the Division of Federal Programs in the Western Support Center in Denver or the Division of Tennessee Permitting in the Knoxville Field Office (KFO).

c. Mining plan means the plan for mining leased Federal coal required by the Mineral Leasing Act (MLA).

d. Mining plan decision document means the decision document prepared and submitted to the Secretary under 30 CFR 746.13, recommending approval, disapproval, or conditional approval of the mining plan.

e. Permit application package (PAP) means a proposal to conduct surface coal mining operations on Federal lands, including an application for a permit, permit revision or permit renewal, all the information required by SMCRA, 30 CFR Chapter VII, Subchapter D, the applicable State program, any applicable

cooperative agreement and all other applicable laws and regulations including, with respect to leased Federal coal, the MLA and its implementing regulations.

f. State-Federal Cooperative Agreement. The formal document executed pursuant to section 523(c) of SMCRA and 30 CFR Part 745, and signed by the Secretary of the Interior and the Governor of a State to provide for State regulation of surface coal mining operations on Federal lands.

4. Policy/Procedures.

a. Background/Policy. Section 522(b) of SMCRA requires a review of Federal lands to determine if areas of these lands should be designated as unsuitable for all or certain types of surface coal mining operations, applying the standards of sections 522(a)(2) and (a)(3). Section 522(a)(2) requires that lands determined to be economically or technologically unreclaimable be designated unsuitable for surface coal mining operations. Section 522(a)(3) requires a review of proposed surface coal mining operations to determine whether they would be incompatible with land use plans, or affect fragile and historic lands, renewable resource lands, or natural hazard lands. Section 523(a) of SMCRA provides that the Secretary shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with section 522(b) even where there is a State-Federal cooperative agreement. The 522(b) Federal lands review process applies to all coal mining situations where Federal lands are involved, including Federal surface with private coal, and areas where other Federal minerals are found and coal mining operations affect the surface of the area.

In 1978, the Secretary of the Interior assigned the Bureau of Land Management (BLM) responsibility for the 522(b) Federal lands review for all lands containing Federal mineral or Federal surface. The unsuitability criteria (43 CFR Group 3400) were identified through a joint effort of the bureaus within the Department of the Interior involved in the Federal coal program and were first promulgated July 19, 1979 (44 FR 42584). The 1979 rulemaking concerned with the unsuitability criteria concluded that the reclaimability criterion (section 522(a)(2) of SMCRA) is most appropriately applied at the surface mining permit application stage and that finding was reaffirmed by the Secretary in 1986 after an Interagency Task Force review.

A July 30, 1982, rulemaking for the Federal coal management program (47 FR 33114) exempted all existing leases from the unsuitability screening in the BLM land use planning process described in 43 CFR Group 3400. While the 1982 rulemaking exempted existing leases from the application of the unsuitability criteria, it did not exempt the development of

Federal coal leases from the statutory environmental protection requirements which are applied by OSM or the States at the time of the mine permit application review and which form the basis of OSM's 522(b) finding (47 FR 33131).

OSM has the responsibility for the Federal lands review for Federal coal leases issued before July 19, 1979, the date when the unsuitability criteria were first adopted. OSM conducts the Federal lands review when surface coal mining operations on these leases are proposed, applying the criteria in 30 CFR Part 762. For Federal coal proposed for leasing after July 19, 1979, BLM applies the unsuitability criteria in 43 CFR Group 3400 to Federal lands. BLM has entered into a Memorandum of Agreement with the Forest Service for Federal lands review on National Forest System lands. OSM makes the determination on reclaimability at the time of permit application review and makes the final 522(b) determination using information submitted with the reclamation plan, the regulatory authority's finding on reclaimability and any other information available from any BLM, Forest Service, or other Federal land management agency (FLMA) review.

b. Procedures/Responsibilities.

Upon receipt of a PAP, the FPE will:

1. For surface coal mining operations proposed on lands containing Federal coal leased before July 19, 1979:

(a) Review the PAP to determine what additional information is needed to ensure compliance with the non-delegable responsibilities for the Federal lands review under section 522(b) of SMCRA.

(b) Contact the FLMA, if applicable, to request information pertinent to the Federal lands review.

(c) Apply the criteria in 30 CFR Part 762 and review the regulatory authority's finding on reclaimability in the findings for SMCRA permit approval, before making the 522(b) determination and notifying the regulatory authority of the determination in writing.

2. For all other surface coal mining operations proposed on Federal lands:

(a) Review the PAP to determine what additional information is needed to ensure compliance with the non-delegable responsibilities for the Federal lands review under section 522(b) of SMCRA.

(b) Contact BLM and the FLMA, if other than BLM, and request a summary of information on the Federal lands review. If no Federal lands review has been conducted, the FPE may offer to assist BLM in conducting the review.

(c) Review any material submitted by BLM or the FLMA concerning the conduct of the Federal lands review and the regulatory authority's finding on reclaimability in the findings for SMCRA permit approval before making the 522(b) determination and notifying the regulatory authority of the determination in writing.

3. For leased Federal coal, include the 522(b) determination in the recommendation memorandum from the FPE to the Director, OSM in the mining plan decision document, in accordance with Directive REG-31.

4. Where OSM determines, as a result of the 522(b) Federal lands review, that lands are unsuitable for all or certain types of surface coal mining operations, prepare a Takings Implication Assessment in compliance with Executive Order 12630 "Governmental Actions and Interference with Constitutionally Protected Property Rights" and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings.

5. Reporting Requirements. None.

6. Effect on Other Documents. None.

7. References.

a. Directive REG-31, "Preparation of Mining Plan Decision Documents."

b. Directive REG-34, "Processing Applications for Federal Permits."

c. 43 CFR Group 3400.

d. Executive Order 12630 "Governmental Actions and Interference with Constitutionally Protected Property Rights" (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.

8. Effective Date. Upon issuance.

9. Contact. Branch of Federal and Indian Programs, Division of Regulatory Programs, (202) 208-2564 or FTS 268-2564.

10. Keywords. Federal lands, Unsuitability, Section 522(b) of SMCRA.

11. Appendices. None.