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	U·S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-24 Transmittal Number: 416 Date: 1/29/88

Subject: Processing Petitions to Designate Lands as Unsuitable for Surface Coal Mining Operations and Termination of Previous Designations

Approval: Ted D. Christensen **Title:** Director

1. Purpose. This directive establishes policy and procedures for the Office of Surface Mining Reclamation and Enforcement (OSMRE) to use in processing petitions to have Federal lands and non-Federal lands in Federal Program States designated as unsuitable for all or certain types of surface coal mining operations, or to have such a designation terminated.

2. Definitions.

a. EIS. Environmental Impact Statement, required by section 102(2)(C) of NEPA.

b. NEPA. The National Environmental Policy Act, which requires the consideration of environmental impacts of Federal actions.

c. PED. Petition evaluation document, the public document that OSMRE prepares to meet the requirements of section 522(d) of the Surface Mining Control and Reclamation Act (SMCRA). If OSMRE determines that an EIS is required for the proposed designation, the PED satisfies the requirements of both SMCRA and NEPA (PED/EIS).

d. Headquarters Coordinator. The staff person in the Branch of Environmental and Economic Analysis who is assigned as Headquarters lead on a petition and works closely with the field staff responsible for the analysis and decision processes, as determined by the AD/FO.

3. Policy/Procedures.

a. Policy. Petitions to designate lands as unsuitable for surface coal mining and reclamation operations shall be processed in accordance with 30 CFR Part 769 for Federal lands (Part 764 for non-Federal lands in Federal program States) and this directive. When a petition is received with both Federal and non-Federal lands in a primacy State with no cooperative agreement, OSMRE shall process the petition only to the extent that it includes Federal lands and refer the petitioners to the State for the non-Federal lands.

SMCRA requires that a public hearing on the petition be held within ten months after the regulatory authority receives the petition. If the petition as originally submitted is determined to be complete, the ten-month time period for the hearing shall be considered to start on the date when OSMRE received the petition, not when OSMRE made the determination of completeness.

If the petition is determined not to be complete as originally submitted, the ten-month period shall start when OSMRE receives the information that makes the petition complete.

Procedures for termination of previous designations shall be the same as those for a petition to designate, except that a new PED is not required for a petition to terminate. For a petition to terminate a designation, OSMRE shall review the PED prepared for the decision to designate and determine the need for additional analysis.

b. Responsibilities.

(1) The Director is responsible for making the final decision on petitions to designate lands as unsuitable for surface coal mining and reclamation operations and termination of such designations.

(2) The Deputy Director, Operations and Technical Services (OTS), is responsible for ensuring that all documents necessary for processing a petition are prepared in accordance with appropriate laws, regulations, and guidelines (including handbooks) and that all material needed for the Director's decision is provided to the Director.

(3) The Assistant Director, Program Policy (PP), is responsible for ensuring that the PED is prepared, printed, and distributed in accordance with appropriate laws, regulations, and guidelines (including handbooks).

(4) The Assistant Directors for Field Operations (FO) are responsible for the completeness review, notifications, public hearing, draft decision document, and field recommendation to the Deputy Director, OTS. They are also responsible for the technical content of the analysis of the petition.

c. Procedures.

(1) Petitions for Designation of Federal Lands as Unsuitable and Termination of Previous Designations.

(a) Initial Processing. Within 30 calendar days of receipt of a petition to designate certain Federal lands as unsuitable for surface coal mining operations or to terminate a previous designation, the Assistant Director, FO, shall determine whether the petition is complete and not frivolous, using the criteria of 30 CFR 769.14(a)(2). If the petition is determined to be frivolous, it shall be returned to the petitioner(s) with a written statement of the reasons for rejecting it.

The Assistant Director, FO, shall also determine whether the petitioner(s) has a right to petition under 30 CFR 769.11. If the petitioner(s) is found not to have standing, the Assistant Director, FO, shall return the petition to the petitioner(s) with a written explanation of why it is being rejected.

If the petitioner(s) has the required standing and the petition is not frivolous but determined to be incomplete, the Assistant Director, FO, shall request the petitioner(s) in writing to submit supplementary information.

If the petitioner(s) has the required standing and the petition is determined to be complete and not frivolous, or when the requested supplementary information is received, the petition is accepted for further review.

(b) Notifications. Upon receipt of a petition and determination that it is not frivolous, the Assistant Director, FO, shall send a copy to the Assistant Director, PP, who then appoints a Headquarters Coordinator.

Immediately upon determining that a petition is complete, the Assistant Director, FO, shall notify the petitioner(s), by certified mail, and the Headquarters Coordinator.

Within two weeks of accepting the petition, the Assistant Director, FO, shall send a copy of the petition to and request relevant information from the following:

1. The authorized officer of the land management agency, asking for a recommendation.

2. Other interested governmental agencies (including the Governor's Office, when appropriate), potential intervenors, the petitioner, and any person known to have an ownership interest in the property subject to the petition.

3. The general public, through the publication of a newspaper advertisement and a Federal Register notice. These notices shall announce the receipt of the petition and include a description of the area, the allegations of fact, and information on where a copy of the petition may be reviewed. The notices also solicit relevant information from the general public. If the Assistant Director, FO, determines that an EIS is required, the Notice of Intent may be combined with this Federal Register notice.

(c) Exception. If lands included in a petition for designation are also included in an administratively complete permit application for which the first newspaper notice has been published, the Assistant Director, FO, may process the permit application and

make a decision on permit issuance. In such case, if a permit is issued, the Assistant Director, FO, shall notify the petitioner and explain why part or all of the petition cannot be considered.

If the decision is to process the permit application along with the petition, the AD/FO must also decide which of the following options to follow for the petition area included in the permit application and notify the petitioner(s) and the permit applicant:

1. Drop the area in the permit application from the petition. If the permit is later denied or the application withdrawn, allow the petitioners to amend the petition to include the lands that were dropped.

2. Drop the area in the permit application from the petition. If the permit is later denied or the application withdrawn, allow the petitioners to submit a new petition for the entire (original) area.

3. Drop the area in the permit application from the petition. If the permit is later denied or the application withdrawn, allow the petitioners to submit a new, second petition on the lands that were dropped.

4. Leave the area in the permit application in the petition. Evaluate the area both with and without the proposed permit area. If the permit is later denied or the application withdrawn, no change is needed in the petition evaluation document being prepared.

The teams processing the petition and the permit application must coordinate their efforts fully.

(d) Public Record. Immediately after receipt of a petition, the Assistant Director, FO, shall establish a record of all documents relating to the petition. Proprietary information and information on the specific location of any property eligible for or on the National Register of Historic Places that could lead to damage or harm to the property shall not be part of the public record unless a designation is based primarily on an allegation based on this information.

(e) Preparation of Draft PED. The Assistant Director, FO, shall prepare the draft PED. If the Assistant Director, FO, determines that an EIS is needed, this PED satisfies the requirements of NEPA and is to be prepared in accordance with the OSMRE NEPA Handbook.

The PED includes a description to the extent known of the coal resources in the petition area, the demand for the coal resources, and the environmental impact of such designation.

(f) Hearing. Within ten months of receipt of the complete petition (see Policy above), the Assistant Director, FO, shall hold a hearing on the petition. If an EIS was also prepared, this hearing on the petition is also the hearing on the draft EIS. If more than one petition is received relating to areas in the same locale, the hearings on all petitions may be combined.

Prior to the hearing, the Assistant Director, FO, shall notify the following of the date, time, and location of the hearing.

1. Local, State and Federal agencies that may have an interest in the decision on the petition, by regular mail at least 30 days before the hearing;

2. The petitioner and any intervenors, by certified mail at least 30 days before the hearing;

3. Any person known to have a property interest in the petition area, by regular mail at least 30 days before the hearing;

4. The general public, through a newspaper advertisement, in accordance with 30 CFR 769.17(b)(3).

(g) Final PED. The Assistant Director, FO, shall prepare the final PED, which responds to public comments on the draft. If it is also an EIS, the document shall be prepared consistent with the OSMRE NEPA Handbook. The Headquarters Coordinator shall arrange a briefing for the Director on the final analysis.

(h) Final Decision. After completing the final PED, the Assistant Director, FO, shall send a recommendation memorandum, draft decision document, draft statement of reasons, and draft Federal Register notice announcing the decision to the Deputy Director, OTS. This recommendation includes a summary of the findings of the PED and the basis for the recommendation.

The Headquarters Coordinator prepares a final recommendation memorandum to the Deputy Director, OTS through the Assistant Director, PP. The Director's decision document, final statement of reasons, final Federal Register notice announcing the decision, and letter to the petitioner are prepared by the Headquarters Coordinator and included with the Headquarters Coordinator's memorandum.

(2) Petitions to Designate Non-Federal Lands in Federal Program States as Unsuitable.

(a) Initial Processing. Within 30 calendar days of receipt of a petition to designate certain non-Federal lands in Federal program States as unsuitable for surface coal mining operations, or a petition to terminate a previous designation, the Assistant Director, FO, shall determine whether the petition is complete and not frivolous, using the criteria of 30 CFR 764.13(b) or (c) and 764.15(a)(2). If the petition is determined to be frivolous, it shall be returned to the petitioner with a written statement of the reasons for rejecting it.

The Assistant Director, FO, shall also determine whether the petitioner(s) has the right to petition, under 30 CFR 764.13(a). If the petitioner(s) does not have standing, the Assistant Director, FO, shall return the petition with a written explanation of why it is being rejected.

If the petitioner(s) has the required standing under 764.13(a) and the petition is not frivolous but incomplete, the Assistant Director, FO, shall request the petitioner in writing to submit supplementary information.

If the petitioner(s) has the required standing and the petition is not frivolous and is complete, or when the requested supplementary information is received, the petition is accepted for further review.

(b) Notifications. Upon receipt of a petition and determination that the petitioner(s) has standing and that the petition is not frivolous, the Assistant Director, FO shall send a copy to the Assistant Director, PP, who then appoints a Headquarters Coordinator.

Immediately upon determining that the petition is complete, the Assistant Director, FO, shall notify the petitioner(s), by certified mail, and the Headquarters Coordinator.

Within two weeks of accepting the petition, the Assistant Director, FO, shall also send a copy of the petition to and request relevant information from the following:

1. The authorized officer of the land management agency, if any, asking for a recommendation.

2. Other interested governmental agencies (including the Governor's Office, where appropriate), potential intervenors, the petitioner, and any person known to have an ownership interest in the property subject to the petition.

3. The general public, through the publication of a newspaper advertisement and a Federal Register notice. These notices shall announce the receipt of the petition and include a description of the area, the allegations of fact, and information on where a copy of the petition may be reviewed. These notices also solicit relevant information from the general public. If the Assistant Director, FO determines that an EIS is required, the Notice of Intent may be combined with this Federal Register notice.

(c) Exception. If lands included in a petition for designation are also included in an administratively complete permit application for which the first newspaper notice has been published, the Assistant Director, FO, may process the permit application and make a decision on permit issuance before processing the petition. In such case, the Assistant Director, FO, shall notify the petitioner and explain why part or all of the petition cannot be considered.

If the decision is to process the permit application along with the petition, the AD/FO must also decide which of the following options to follow for the petition area included in the permit application and notify the petitioner(s) and the permit applicant:

1. Drop the area in the permit application from the petition. If the permit is later denied or the application withdrawn, allow the petitioners to amend the petition to include the lands that were dropped.

2. Drop the area in the permit application from the petition. If the permit is later denied or the application withdrawn, allow the petitioners to submit a new petition for the entire (original) area.

3. Drop the area in the permit application from the petition. If the permit is later denied or the application withdrawn, allow the petitioners to submit a new, second petition on the lands that were dropped.

4. Leave the area in the permit application in the petition. Evaluate the area both with and without the proposed permit area. If the permit is later denied or the application withdrawn, no change is needed in the petition evaluation document being prepared.

(d) Public Record. Immediately after receipt of a petition, the Assistant Director, FO, shall establish a record of all documents relating to the petition. Proprietary information and information on the specific location of any property eligible for or

on the National Register of Historic Places that could lead to damage or harm to the property shall not be part of the public record unless a designation is based primarily on an allegation based on this information.

(e) Preparation of Draft PED. The Assistant Director, FO, shall prepare the draft PED. If the Assistant Director, FO, determines that an EIS is needed, this PED satisfies the requirements of NEPA and is to be prepared in accordance with the OSMRE NEPA Handbook.

The PED includes a detailed description of the coal resources in the petition area, the demand for the coal resources, and the environmental impact of such designation or termination.

(f) Hearing. Within ten months of receipt of the complete petition (see Policy, above), the Assistant Director, FO, shall hold a hearing on the petition. If an EIS was also prepared, this hearing on the petition is also the hearing on the draft EIS. If more than one petition is received relating to areas in the same local, the hearings on all petitions may be combined.

Prior to the hearing, the Assistant Director, FO, shall notify the following of the date, time, and location of the hearing.

1. Local, State and Federal agencies that may have an interest in the decision on the petition, by regular mail at least 30 days before the hearing;

2. The petitioner and any intervenors, by certified mail at least 30 days before the hearing;

3. Any person known to have a property interest in the petition area, by regular mail at least 30 days before the hearing;

4. The general public, through a newspaper advertisement, in accordance with 30 CFR 764.17(c).

(g) Final PED. The Assistant Director, FO, shall prepare the final PED, which responds to public comments on the draft. If it is also an EIS, the document shall be prepared consistent with the OSMRE NEPA Handbook. The Headquarters Coordinator shall arrange a briefing for the Director on the final analysis.

(h) Final Decision. After completing the final PED, the Assistant Director, FO, shall send a recommendation memorandum, draft decision document, draft statement of reasons, and draft Federal Register notice announcing the decision to the Deputy

Director, OTS. This recommendation includes a summary of the findings of the PED and the basis for the recommendation.

The Headquarters Coordinator prepares a final recommendation memorandum to the Deputy Director, OTS through the Assistant Director, PP. The Director's decision document, final statement of reasons, final Federal Register notice announcing the decision, and the letter to the petitioner are prepared by the Headquarters Coordinator and included with the Headquarters Coordinator's memorandum.

4. Reporting Requirements. As noted in the body of this directive.

5. References. Section 522(e) of the Surface Mining Control and Reclamation Act and 30 CFR Parts 764 and 769; the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.

6. Effect on Other Documents. These procedures must be implemented in a manner consistent with the OSMRE NEPA handbook.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Environmental and Economic Analysis, 343-5150.