

FEDERAL REGISTER: 43 FR 57662 (December 8, 1978)

DEPARTMENT OF THE INTERIOR

AGENCY: Bureau of Land Management (BLM)

Coordination of Federal Lands Review under the Surface Mining Control and Reclamation Act, Land Use Planning under the Federal Land Policy and Management Act, and the Federal Coal Management Review under the President's Environmental Message of May 1977 Statement of Policy; Request for Comments

ACTION: Statement of Policy; Request for Comments.

SUMMARY: The BLM is preparing supplements to some of its management framework plans to make the plans consistent with recent statutory changes involving new environmental protection measures that may affect potential development of coal resources on federal lands. The criteria used to make these changes are interim criteria which may be revised after the Department completes its coal programmatic environmental impact statement. If the final criteria are different from the interim ones, all plans would be changed to conform to the final criteria. The interim criteria are being applied to avoid waste of time and money in ongoing planning efforts, to ensure that plans are as environmentally sensitive as possible, and to give the Department as much information as possible on the effect of the criteria before it adopts any final regulations.

DATE: Comments may be submitted until February 1, 1979.

ADDRESS: Comments should be sent to: Director, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Director, Office of Coal Management, 202-343-6821 or Robert A. Jones, Chief, Division of Environmental and Planning Coordination, 202-343-5682.

I. STATEMENT OF POLICY

On November 8, 1978, the Bureau of Land Management (BLM) issued Instruction Memorandum 79-76 authorizing five of its western state offices and the Eastern States Office to revise portions of existing approved land management framework plans (MFP's) after the offices' review of certain areas of the plans to see how the plans are affected by tentative criteria for "unsuitability." A copy of the Instruction Memorandum is attached to this Notice as Appendix A. Additional instructions will soon be sent to these offices for applying the criteria to ongoing and future land-use planning. The three purposes for this review are: (1) to make sure that the MFP's reflect as carefully as possible existing statutory requirements and policies; (2) to begin to carry out the requirements of the federal lands review mandated by section 522(c) of the Surface Mining Control and Reclamation Act (SMCRA) and (3) to make these MFP's more complete, accurate and environmentally sensitive so that the BLM could better delineate proposed leasing tracts after the programmatic environmental impact statement on a federal coal management program is completed *if* the Secretary decides to adopt a program and to lease coal under that program.

The purpose of this notice is to inform the public of the steps that the Department of the Interior (Department) has taken and why these steps are needed to effect its obligations under the SMCRA, the Federal Land Policy and Management Act (FLPMA), and the Federal Coal Leasing Amendments Act (FCLAA) in a coherent manner consistent with our obligations under each statute.

II. BACKGROUND

The Department has the responsibility to carry out similar land-use planning related duties under several statutes and must coordinate its responsibilities to minimize waste and duplication. The statutes related to the BLM instruction memorandum are described briefly below.

A. FEDERAL LAND POLICY AND MANAGEMENT ACT OF OCTOBER 21, 1976

Section 202 of FLPMA, 43 USC 1712, directs the Secretary of the Interior to develop land-use plans for the administration and use of discrete areas (planning units) of the public lands. The plans are to be designed on inter-disciplinary, multiple use and sustained yield principles. Section 202 authorizes the issuance of management decisions to implement land-use plans.

Under this authority, the BLM inventories the resources of public lands in each planning unit and formulates MFP's which indicate the resource values and the potential for the use and management of the lands, including exclusive and mutually conflicting uses. These MFP's are devised with extensive public input and opportunity for public comment. Prior to the enactment of FLPMA, the BLM carried out planning activities under sections 1601 to 1609 of the BLM Manual. In response to FLPMA, the Department is modifying and codifying its land-use planning system. 43 FR 8814 (March 3, 1978) (advanced notice of proposed rulemaking). Activities can and are continuing to take place under existing plans and will most likely continue to do so even after regulations are adopted. The Act has not halted new planning or the revision of existing plans.

B. SURFACE MINING CONTROL AND RECLAMATION ACT OF AUGUST 3, 1977 (SMCRA)

SMCRA established the Office of Surface Mining Reclamation and Enforcement (OSM), and directed it to establish performance standards and permitting procedures for all surface coal mining operations. The full background of this Act and an explanation of its requirements and the Department's proposals to carry out the requirements of this Act can be found in the Department's proposed permanent program regulations, 43 FR 41828 (September 18, 1978), and in the draft environmental impact statement and draft regulatory analysis prepared on that proposal.

With regard to federal lands, sections 522(b) and 523 of SMCRA, 30 USC sections 1272(b), 1273, require the Secretary: (1) to establish a federal lands program to govern surface and underground coal mining operations on federal lands; (2) to conduct a federal lands review to determine if certain classes of federal lands should be designated unsuitable for all or certain types of surface coal mining operations; and (3) to establish a process by which the public may petition to have federal lands designated unsuitable for all or certain types of surface coal mining operations.

The specific requirements of the federal lands review are to determine whether there are areas of federal lands "which are unsuitable for all or certain types of surface coal mining operations." Surface mining is permitted on federal lands before the review is completed, but when unsuitable lands are identified, the Secretary is required to limit surface coal mine operations and underground mining with surface effects on those lands. The federal lands review segment of SMCRA's requirement is quite similar to the kind of evaluation that the BLM does during the land-use planning process.

C. PRESIDENT'S ENVIRONMENTAL MESSAGE OF MAY 1977

The President's Environmental Message to Congress of May 23, 1977 (Vol. 13, No. 22, *Compilation of Presidential Documents* 782), and an accompanying memorandum to the Secretary of the Interior, directed the Secretary to review the existing federal coal leasing program, the Energy Minerals Activity Recommendation System (EMARS), 43 CFR Subpart 3525, 42 FR 25471 (May 17, 1977)), and stated the Administration's emphasis on the need for strong strip mining control legislation.

The Department immediately began to study how the leasing program should be redesigned to provide for leasing only in environmentally acceptable areas where mining would be compatible with other land uses, how best to guarantee timely development of existing, environmentally acceptable leases, and how to treat leases on environmentally sensitive lands. As is explained in section D, the importance and urgency of the review was magnified by a court decision on the environmental impact statement that the Department filed in 1975 before adopting the EMARS program on June 1, 1976. The Department plans to publish a new, draft environmental impact statement on its current "preferred alternative" coal management program by mid-December of 1978. The final environmental impact statement is scheduled to be published by April 30, 1979, and a decision by the Secretary whether to adopt a program will occur shortly thereafter.

B. LITIGATION

On September 27, 1977, the U.S. District Court for the District of Columbia enjoined the further implementation of the coal leasing program described in the 1975 programmatic environmental impact statement, EMARS, until the Department completed a new or supplemental impact statement on its coal leasing program that would cure deficiencies the court found in the impact statement on which the EMARS program was based. *Natural Resources Defense Council v. Hughes*, 437 F. Supp. 981 (D.D.C. 1977). On June 14, 1978, the court modified the injunction: (1) to enjoin the Department "from taking any steps whatsoever, directly or indirectly, to implement the [EMARS] program, including calling for nominations of tracts for... leasing, and issuing any coal leases except [for listed types of cases];" and (2) to provide that "[federal defendants may prepare comprehensive land use plans as long as they do not recommend the leasing of any tracts of federal coal; however, the plans can consider present and potential uses of the public lands." 454 F. Supp. at 151, 152 (D.D.C. 1978), *appeal pending*.

E. DISTRIBUTION OF FUNCTIONS

After the passage of SMCRA, Departmental officials agreed on how the functions that relate to federal coal management would be distributed among Departmental agencies to implement the federal lands program under SMCRA in a manner consistent with existing authorities and responsibilities for federal coal administration. The Assistant Secretaries for Energy and Minerals and Land and Water Resources, and the Directors of OSM, BLM and the Geological Survey transmitted their recommendations for Secretarial approval. On July 5, 1978, the Under Secretary adopted these recommendations. That distribution of functions is attached to this notice as Appendix B. The distribution of responsibility will be formally adopted in a memorandum of understanding among the three agencies that more specifically details the procedures and the functions distributed. That memorandum is currently in preparation. One particularly important decision is that the BLM has the primary responsibility to conduct the federal lands review under section 522 of SMCRA. The Department made this decision because of the overlap between the federal lands review and the existing BLM land-use planning system; a failure to consolidate the two programs would have created unnecessary expense and duplication. The identification of "unsuitable" lands will be done in the BLM land-use planning process; the formal designation will be made separately by BLM.

F. DEVELOPMENT OF UNSUITABILITY CRITERIA

In November of 1977, a Departmental task force began to formulate criteria for the designation of lands as unsuitable for all or certain types of coal mining operations. The Task Force's review was not limited to criteria required by SMCRA. It addressed all relevant statutory and Executive Order obligations and authorities. It not only reviewed what authority existed, but it also "filed tested" different criteria. In the field tests, the Task Force members went to the planning unit, applied the criteria, and determined how much land and how much coal would be excluded from development by each criterion. The Final Task Force Report was filed on September 11, 1978, and is available upon request. The Task Force's recommended unsuitability criteria and the format for the designation process were transmitted for Secretarial review as an issue paper with the coal management review. Although the federal lands program (including the federal lands review) is exempt from the requirements of the National Environmental Policy Act (NEPA) for preparation of an environmental impact statement, 30 USC 1292(d), on September 28, 1978, the Under Secretary endorsed a set of criteria as the preferred alternative for further consideration in the federal coal management programmatic environmental impact statement. At the same time, the Under secretary endorsed as part of the preferred alternative the implementation of the criteria through the BLM's land-use planning process. The Under Secretary's decision on this subject is Appendix C to this Notice.

The Department intends to include in the example rules that will be attached as an appendix to the draft programmatic impact statement detailed unsuitability criteria. The Department's example rules, if adopted, would fulfill some of the requirements of the federal lands program required by section 523 of SMCRA. The remainder of the federal lands program is covered by other regulations that the Department will adopt. See proposed 30 CFR Part 762 (43 FR 41828-29, September 18, 1978).

III. EXPLANATION OF DECISION TO CONSIDER UNSUITABILITY CRITERIA IN ONGOING LAND-USE PLANNING ACTIONS

For the following reasons, the Department has decided to incorporate these draft unsuitability criteria into the ongoing land-use planning process. This process will start first with existing approved MFP's, and will be quickly expanded to include all new MFP's.

First, because BLM's land-use planning process is ongoing, the failure to include these standards in the resource inventory and planning process would require subsequent wasteful duplication of efforts now under way or soon to be initiated. This kind of planning is in no way restrained by *NRDC v. Hughes, supra*, and the decision to incorporate new, more environmentally sensitive factors into the planning process is fully consistent with that decision. The *Hughes* decision allows all necessary planning to take place; it only prohibits having the plan recommend *tracts* for leases. There is no impediment to eliminating lands from eligibility for leasing or from identifying *areas* in which tracts could be identified and considered for leasing if and when a leasing program is adopted.

If the Secretary were to conclude after completion of the coal programmatic environmental impact statement that he should adopt a coal management program and if that program were to include prompt competitive leasing to fill existing needs for federal coal, the existence of this completed planning would permit significantly more timely, more informed and more environmentally sensitive preliminary tract identification, tract ranciting and tract selection. Failure to exercise this existing authority could also lessen the quality of information available to the Secretary in the final coal programmatic environmental impact statement and at the time of his decision on whether to adopt a leasing program.

Second, although the SMCRA does not require the Department to complete the federal lands review segment of the federal lands program within any particular time, there are several important reasons why the review should be carried out promptly. Once lands have been reviewed for unsuitability characteristics, government, industry and the general public will know where coal development could potentially take place on public lands and where it cannot. Each can then undertake the kind of long-term analysis that will ultimately contribute to sound coal development on federal lands.

The need to avoid delay is also underscored by the ongoing coal management review. The Department, after reviewing the final coal programmatic environmental impact statement, could decide that a program should be adopted and that new leasing should take place. Secretary Andrus has stated that if new leasing is needed, lease sales could begin to be held as early as 1980. If leasing is needed, the interests of the government, the industry and the public in having leases located in environmentally sound areas will be accommodated if BLM has reviewed for potential unsuitability problems as many of the MFP's as is possible prior to the time the initial round of selection of tracts takes place.

Third, the department and the public will benefit greatly from this early application of the criteria before they are formally adopted by the Department. This information will be used to supplement the results of the field tests described in the Task Force Report, and will allow better, more informed decisionmaking. The testing of the initial criteria took place in only three units. This additional testing and use of revised criteria will take place in nine units with full public participation. Final regulations will reflect the results of this round of application, and changes will be made to correct either procedural or substantive shortcomings.

The Department believes that these steps are fully consistent with the NEPA. This is true not only because SMCRA exempts from the environmental impact statement process the criteria ultimately adopted as part of the federal lands program, 30 U.S.C. Sec. 1292, but also because the planning process discussed in this notice and established in the BLM's Instruction Memorandum is the step prior to, and does not include, formal designation of lands as unsuitable. * This step will not be taken until after the procedure and criteria for actual designation are established by regulation. The Department will change the MFP's if necessary to comply with the final regulations. Thus, this process does not irretrievably or irreversibly commit any resources.

* Similarly, proceeding to this state in the land-use planning process does not involve the delineation or selection of leasing tracts, and is fully consistent with the present injunction in *Natural Resources Defense Council v. Hughes*, *supra* .

In this manner, the Department believes it has begun and will proceed to implement the directives described above in a timely, efficient and lawful manner. The Department will soon publish a schedule for formal rulemaking proceedings on these unsuitability criteria.

Public comment on this notice is welcome. Any comment on the contents of this Notice may be used by the Department in the formulation of coal-related portions of the BLM's land-use planning regulations, in evaluating the BLM's instruction memorandum on this subject, and in the completion of the draft coal programmatic environmental impact statement and example coal regulations to be appended to it. Comments on matters dealt with in this notice should be sent to: Director, Bureau of Land Management (220), Department of the Interior, Washington, D.C. 20240.

Dated: December 5, 1978.

GUY R. MARTIN, *Assistant Secretary, Land and Water Resources* .

APPENDIX A

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Washington, D.C., November 8, 1978.

Instruction Memorandum No. 79-76. Expires 9/30/79.

To: SD's -- Colorado, Montana, New Mexico, Utah, Wyoming; and D-ESO.

From: Associate Director.

Subject: Coal Related Land-use Planning: Interim Guidelines: Existing, Approved MFPs.

Enclosed find the current unsuitability criteria along with relevant background and procedural instructions from the Department.

Upon receipt of this memorandum, you are cleared to do an unsuitability review of the planning areas approved by the office of Coal Management in already existing approved MFP's. We will soon be sending you instructions how to apply these criteria as part of MFP's or land-use analyses now underway, and future MFP's. This review is the part of the Department's first effort to satisfy the Federal lands review requirements of section 522(b) of the Surface Mining Control and Reclamation Act (SMCRA); it will be under critical scrutiny from many sources. It is important that you proceed in a consistent fashion and in total compliance with Departmental guidance. To facilitate this, the following step by step procedure is provided.

Our objective is a printed and reproducible MFP supplement, for each MFP involved, which shows clearly how the criteria were applied to the coal area, how the unsuitability determinations were made, additional coal areas that were eliminated based on multiple use tradeoffs, and the conditions/stipulations to be imposed for the remaining areas which are acceptable for further consideration for coal development.

As explained by the Director to the Coal State Directors on October 18, we also expect these supplements to be the best possible base for (4) formally designating lands unsuitable for mining once the Federal Lands Program is adopted under section 523 of SMCRA, and (2) initiating an efficient coal activity planning process should the Secretary decide to initiate a competitive leasing program following the filing of the final environmental statement next spring.

Lead responsibility for this review is assigned to the Division of Environmental and Planning Coordination (E&PC) since this is part of the land use planning process. The Office of Coal Management will be heavily involved in view of the importance of this process to the Department's coal program.

The MFP supplements are to be completed by May 1, 1979.

General

In accomplishing this review, you should not apply criteria or reach judgments regarding non-Federal coal included within the review area. If an area includes a Federal coal lease and would, based upon the process described in the following steps, be in an area covered by a criterion, this should be noted. If you do so, make it clear that the unsuitability criteria will be formally appealed when mining plans are submitted for approval. The Department will have the opportunity to decide whether the standard can legally be applied to the lease and to review the factual basis for the conclusion in greater detail.

Step 1

Identify areas which are to be reviewed. The areas are being approved by the Director (140), and, to begin with, the review will be limited to these areas.

Step 2

Issue a public notice of intent (Federal Register as well as other methods) to apply the criteria and supplement the MFP. Hold meetings as necessary to explain the process.

The Director (140) will provide a standard notice as soon as possible for your use. The SD has discretion as to whether a meeting is needed at this point. If there is sufficient public interest to make such a meeting useful, it should be held. In any event, the process should be held. In any event, the process should be discussed fully with all interested parties. The Department will be making shortly a national announcement.

Step 3

Apply each criterion separately. Do *not* apply any exceptions. (See Step 6 for application of exceptions).

1. Where additional data is needed to apply the criteria, such data should (a) be requested immediately from State agencies, universities, or other Federal agencies including the GS, OSM and FWS; or (b) obtained "in-house" by BLM or via contract when it is not available from other sources within the needed time frames, if any.

2. Make determinations as well as possible given the data available. If it is uncertain whether a criterion applies to an

area due to a lack of data, but you are quite certain that the area would be judge unsuitable if the data are collected, determine that the area is unsuitable. If data are deficient and you have no indication what adequate data would show, conclude that the area is acceptable, subject to further data collection at the coal activity planning stage should the Secretary decide to undertake a coal leasing program, and subject to further data collection in subsequent MFP revisions whether or not coal program is adopted.

Step 4

Identify areas which are "unacceptable" from a multiple use tradeoff point of view but which are not ruled out based on the unsuitability criteria. This in an important step for those areas outside the coal areas shown on your existing MFPs. This step will show how you are either confirming your prior multiple use plan or modifying it to provide for additional areas acceptable for further consideration for coal development.

Step 5

Prepare composite maps showing (1) all areas to which criteria apply without using exceptions and (2) additional areas that are unacceptable based on multiple use trade-offs.

Step 6

Apply exceptions to the unsuitability criteria.

1. Exceptions are not identified until this step to avoid the work necessary in considering an exception in the event that more than one criterion might apply to the area, or if the area is unacceptable because of multiple use tradeoffs.
2. Note that under the Secretary's preferred alternative, use of exceptions is discretionary. Use the exception process to insure that the resulting areas acceptable for further consideration are a rational and logical base for further planning. In other words, do not identify a small acreage exception in a large area that is otherwise unsuitable. Consider using an exception when a large acceptable area has a few small areas based on the criteria alone.
3. Identify the stipulations and conditions to accompany each exception area that would apply to leasing or mining activities.

Step 7

If not previously done, consult with the landowners in the remaining acceptable areas. Solicit comments from surface owners using the process prescribed in Instruction Memorandum No. 78-382.

Step 8

Consider surface owner preference and determine additional areas not available for further consideration for coal development. As a general rule, determine an area to be not available if you receive negative comments from the surface landowner.

Step 9

Review with the public and other Federal/State agencies, the resulting areas to which the criteria apply and the areas acceptable for further consideration for coal development. This should be accomplished through the regular form of meeting or workshop or solicitation of comment on a draft MFP supplement, at the discretion of the SD and DM. The results of this review shall be incorporated into the supplement.

Step 10

Prepare a statement for the areas on which the criteria would exclude mining based on the Department's unsuitability criteria *only*. We view this as a fairly concise and brief item (4-5 pages) including for that area (1) the potential coal resources involved; (2) the demand for such resources; and (3) the impact of such designation on the environment, the economy, and the supply of coal. The material for this statement should be available in your ongoing regional ES and in the new programmatic ES which will be in DES form during the period involved.

Step 11

Make a decision on which areas would be excluded from mining by the criteria and multiple-use trade-offs. The remaining areas are acceptable for further consideration for coal development. This decision is permissible under the Federal Land Policy and Management Act (FLMPA), and portions of such decisions are the first step in the Federal Lands Review. Formal designation will follow after the Federal Lands Program is adopted, and all steps required by SMCRA are followed. The MFP supplement should be approved by the Bureau officer who approved the MFP.

Format and Documentation Requirements

The results of the above steps shall be recorded in a reproducible format as follows:

1. Introduction

This should be a brief introduction to the area being reviewed and a statement of the original MFP decision (map and narrative). It should explain why the unsuitability review is being accomplished. If appropriate, explain why a larger area is being evaluated than was planned for coal in the recently completed MFP. Such an explanation should indicate that the review is:

- a. To begin to carry out the Federal lands review required by section 522(b) of SMCRA. The actual formal designation will follow approval of the plan supplement.
- b. To identify areas acceptable for further consideration for coal development should the Secretary decide to proceed with a coal leasing program.
- c. Not to identify tracts and, in fact, to look again at larger coal areas in those instances where the recently approved plan displayed potential tracts.

Budget and time limitations should be described and the process which led the partial MFP review should be explained. Indicate that the balance of the area will be reviewed the next time the MFP is revised. Also, if any existing Federal coal leases appear in an area otherwise considered unsuitable and no conclusion is reached for these areas (see Step 1), explain that the criteria will be applied when mining plans are submitted for review and approval.

The introduction should be accompanied by (maps) showing the location of the coal areas relative to the State, the counties involved, major access routes, etc. Keep in mind the fact that many people will see the MFP supplement who have not seen the total MFP.

The introduction should also include (by reference to an appendix if necessary) a base map which can be overprinted to document the details of the unsuitability review.

2. The Updated Plan

This is the approved area considered unsuitable for coal mining and the stipulations and conditions for the remaining area considered acceptable for further consideration for coal development. This should not be construed in anyway as an authorization to recommend tracts for lease. The stipulations and conditions should be those originally developed for the area plus any developed during the application of the criteria and exceptions. The above should be shown by map overprint and narrative.

3. Impact of the Unsuitability Designation

This is the statement developed during Step 10.

4. Record of How the Unsuitable Area Was Developed

a. Include a separate narrative and map overprint for each criterion showing how it was applied (see Step 3). The applications of several criteria may be shown on the same map, if this is possible without cluttering the map.

Include in the narrative the rationale for the unsuitability determination, and the quality of data used for each criterion (see paragraphs on pages 2, 3, 4 of the enclosed Secretarial memorandum).

b. Print and include the composite map prepared during step 5 showing separately (1) the application of all criterion before exceptions are considered and (2) any additional areas excluded based on multiple use tradeoffs. This map need not distinguish between areas determined unsuitable under each criteria.

- c. Print and include a map (over the composite map if the map is not too cluttered) showing all exceptions identified in Step 6 and a narrative indicating the terms or stipulations required.
- d. Describe changes in the unsuitable area that you made as a result of public and state consultation.

Since this is the first application of these criteria and, thus, constitutes their first test under field conditions, and because these criteria are subject to change at the time the Secretary makes his decision on the coal management review, the Director (140) should be notified of any serious difficulties encountered in applying any of the criteria immediately. This notice should describe not only the nature of the difficulty, but also how it was adjusted for, and constructive suggestions for change.

GERALD E. PETTY, *Acting*.

1 Enclosure:

Encl. 1 -- Ltr dtd 11/3/78 to Assistant Secretaries and Director, BLM, re: The lands Unsuitability Criteria in the Preferred Federal Coal Management Program

APPENDIX B

DIVISION OF FUNCTIONS AND RESPONSIBILITIES CONCERNING MANAGEMENT OF FEDERAL COAL BETWEEN THE OFFICE OF SURFACE MINING, THE U.S. GEOLOGICAL SURVEY AND THE BUREAU OF LAND MANAGEMENT

A. *PRE-LEASING FUNCTIONS*

1. *Function* : Evaluate the coal resources.
 - a. Description of functions: evaluating the coal resources includes determining the mineral characteristics and values of the land proposed for leasing and recommending logical mining units (where applicable), recommending royalty type and amount and rent.
 - b. *Present responsibility of* : GS
 - c. *Alternatives* : Leave evaluating the coal resource with GS
 - d. *Decision*: In as much as neither OSM or BLM has any statutory authority under which they could assume this function, GS shall continue exercising this responsibility.

2. *Function* : Petition process for designation of Federal lands unsuitable for all or certain types of surface coal mining operations.
 - a. *Description of function* : Persons with an interest which is or may be adversely affected have a right to petition the Secretary of Interior to have an area of Federal lands designated unsuitable for all or certain types of surface coal mining operations or to have such designation terminated. In addition, BLM has authority to manage publically-owned resources under FLPMA of 1976.
 - b. *Present responsibility of* : Not assigned
 - c. *Alternatives*:
 1. GS in consultation with OSM, BLM and other agencies as appropriate.
 2. BLM in consultation with OSM, GS and other agencies as appropriate.
 3. OSM in consultation with GS, BLM and other agencies as appropriate.
 4. OSM receives all petitions, and refers them to field offices of the Federal surface management agency and other appropriate State and local agencies. Surface managing agency makes substantive review and develops a tentative recommendation. OSM conducts public hearing. Surface managing agency makes final recommendations to OSM. If OSM concurs, decision is issued at field level by OSM. If OSM does not concur, the decision is referred to headquarters for resolution. OSM is to assure consistency with State systems to designate lands and be generally responsible for coordination and preparation of decision documents.
 - d. *Decision*: OSM, as the regulatory authority, is responsible for receiving petitions, conducting hearings, and issuing decisions. At the same time, the surface managing agencies have responsibility for the overall planning and management of public lands. Alternative 4 recognizes these responsibilities and we adopt it.

3. *Function:* Federal Coal Lands Review.

a. *Description of function:* Section 522(b) of the SMCRA of 1977 charges the Secretary with reviewing the Federal lands to determine if any areas are unsuitable for all or certain types of surface coal mining operations and to condition any mineral leasing consistent with the designation.

Sections 201 and 202 of FLPMA direct the Secretary to inventory resources of the public lands, designate areas of critical environmental concern and to prepare land use plans on appropriate uses of the public lands.

b. *Present responsibility of:* Not assigned

c. *Alternatives:*

1. GS in consultation with OSM, BLM and other agencies as appropriate.
2. BLM in substantial consultation with OSM, gs/ and other surface managing agencies as appropriate.

OSM to have concurrence in establishing ground rules and criteria for Federal coal lands review. BLM applies the criteria in the determination of suitability.

3. OSM in consultation with GS, BLM and other agencies as appropriate.

4. Special Interagency task force to make an in-depth review of the Federal coal lands and report to the Assistant Secretaries options and recommendations concerning which areas should be designated unsuitable for all or certain types of surface coal mining operations.

d. *Decision:* Because of management authorities of the different agencies we adopt alternative 2.

4. *Function:* Review Process and Petition process for designation of Federal lands unsuitable for non-coal mining.

a. *Description of function:* Persons with an interest which is or may be adversely affected have a right to petition the Secretary of Interior to have an area of Federal lands designated unsuitable for non-coal mining operations. In addition, the Secretary may initiate a review process on his own motion, or initiate such a review at the request of a Governor. The Secretary may withdraw designated areas from mineral entry or leasing according to the nature of the designation.

b. *Present responsibility of :* Not assigned

c. *Alternatives :*

1. GS in consultation with OSM, BLM and other agencies as appropriate.

2. BLM in consultation with OSM, GS and other agencies as appropriate.

3. OSM in consultation with GS, BLM and other agencies as appropriate.

4. OSM receive all petitions, and refer them to agencies with expertise. Agencies make

recommendations to their Assistant Secretaries who then vote and make a recommendation to the Secretary. OSM to handle consultation with State and local interests, to arrange hearing and be generally responsible for coordination and preparation of decision document.

d. *Decision:* We adopt alternative 2.

5. *Function:* Preparation of regional EIS or, where required, a site specific pre-lease EIS concerning lease tract selection.

a. *Description of function:* Section 102(2)(c) of NEPA requires agencies taking major Federal actions significantly affecting the environment to prepare environmental impact statements on those actions.

b. *Present responsibility of:* BLM and GS

c. *Alternatives for lead agency:*

1. GS with OSM, BLM other appropriate agencies, and State and local interests.

2. OSM with BLM, GS, other appropriate agencies, and State and local interests.

3. BLM as the lead agency with special exceptions where another agency is designated as lead agency, in

substantial consultation with OSM, GS, other appropriate agencies and State and local interests.

d. *Decision:* Because of BLM's basic responsibility relating lease tract selection, we adopt alternative 3.

6. *Function:* Preparation of special lease terms and conditions.

a. *Description of function:* This function includes preparing special stipulations in guarding environmental performance standards and other protective provisions.

b. *Present responsibility of:* BLM and GS

c. *Alternatives for the coordinating agree with input from relevant agencies:*

1. BLM with OSM and GS concurrence

2. GS

3. OSM

d. *Decision:* Because BLM is the official representative of the Secretary dealing was lease applicants and taking into consideration OSM's responsibilities under SMCRA (to administer the environmental protection requirements of the Act) and GS responsibilities under the MLA, we adopt alternative 1.

7. *Function:* Acting as the Secretary's official representative in dealing with lease applicants. This function is currently assigned to BLM and is not considered an issue.

8. *Function:* Surface Owner Consent.

a. *Description of the function:* Section 714 of the SMCRA of 1977 prohibits leasing Federal coal where the mineral estate is owned by the Federal Government without the consent of private surface owners. Consultation with surface owners concerning lease tract proposals is required.

b. *Present responsibility of:* Not assigned.

c. *Alternatives:*

1. BLM
2. GS
3. OSM

d. *Decision:* We adopt alternative 1 because this function is a lease tract selection function and therefore belongs with BLM.

B. POST LEASING PRE-MINING FUNCTIONS

1. *Function:* Prepare recommendations on applications for use of federally owned surface over leased coal for uses unrelated to rights granted under Federal coal lease.

a. *Description of function:* Upon request of BLM or other surface management agency a mineral report is prepared. The report takes into account whether or not the intended use would interfere with mining, cause damage to coal or other minerals, or make coal or other minerals inaccessible for future extraction or conflict with proper reclamation of the lands.

b. *Present responsibility of:* GS

c. *Alternatives:*

1. GS to continue to exercise entire function.
2. OSM to assume entire function.
3. OSM and GS to jointly exercise function.

d. *Decision:* We agree that BLM should continue to receive applications. Prior to receipt of coal mining plan it is solely GS responsibility to report on surface use application. After receipt of coal mining plan GS retains responsibility with OSM concurrence. Alternative 3.

2. *Function:* Delineation of "area of operations" (AO) on coal leases and approved surface use areas within the AO.

a. *Description of function:* A map is prepared showing the "AO" which is defined as the area within a lease where mining, reclamation, and related activities take place. The purpose of delineating the "AO" is to make clear agency jurisdiction.

b. *Present responsibility of:* GS

c. *Alternatives:*

1. GS to continue to exercise function.
2. GS to retain responsibility until a mining plan is received then OSM to assume responsibility with concurrence of BLM and GS.
3. OSM and GS to jointly exercise function.

d. *Decision:* We adopt alternative 2 because we conclude that GS should retain the authority to delineate AO's until a mining plan is received. After a mining plan is received the AO must be adjusted. Since OSM will receive mining plans, OSM should then have responsibility for delineating the AO in consultation with BLM and GS. OSM will monitor off-site effects of mining operations outside the AO. OSM will obtain concurrence from GS in connection with GS royalty, production, and diligent development responsibilities.

3. *Function:* Review and approval of mining plans or major modifications thereof; lead agency for preparation of site specific EA/EIS and coordination with other agencies outside DOI.

a. *Description of function:* Approval of mining plans or major modifications thereof. Existing procedures require the preparation of an environmental analysis of EIS of a proposed mining plan or a major modification thereof. Under NEPA one agency is designated as the lead agency for preparation of these documents in consultation with the surface managing agency, and for coordination of review by other agencies.

b. *Present responsibility of:* GS has sole authority to recommend approval of mining plans to the Assistant Secretary, Energy and Minerals, after consulting with BLM. GS is responsible for EA and EIS preparation and coordination of review thereof.

c. *Alternatives:*

1. OSM to assume legal responsibility for recommending approval of mining plans and modifications and environmental review to the Assistant Secretary, Energy and Minerals, with written concurrence of the GS on production and resource recovery requirements. OSM to have responsibility for contacts with the mining companies regarding mining plans and post-mining land use, with coordination by GS with OSM on GS contacts with companies regarding matters

concerning GS responsibilities relating to development, production and resource recovery requirements. BLM to retain authority to recommend and approve special requirements relating to protection of natural resources and post-mining land use of affected lands and to participate in preparation of EA/EIS.

2. GS to retain existing responsibilities with oversight by OSM. BLM to retain authority to recommend and approve special requirements relating to protection of natural resources and post-mining land use of affected lands, and participate in preparation of EA/EIS.

d. *Decision:* We adopt alternative 1, assigning this function to OSM because it is an essential function delegated to it under Section 201 of SMCRA. to OSM because it is an essential function

4. *Function:* Responsibility for all non-lessee activity on leased land prior to operations.

a. *Description of function:* Existing procedure assigns sole responsibility to BLM for the control of activities on leased land prior to mining by persons other than the lessee. Section 301(b) of the Federal Lands Policy and Management Act mandates BLM jurisdiction over such activities. GS has responsibility for supervision of exploration license activities and multiple mineral development activities. Other surface managing agencies such as the Forest Service also have responsibility for managing surface resources.

b. *Present responsibility of:* BLM

c. *Decision:* We do not consider this function to be an issue.

C. FUNCTIONS AND RESPONSIBILITIES DURING MINING OPERATIONS

1.*Function:* Act as Secretary's representative in dealing with lessees and/or operators during operations.

a. *Description of function:* (Agencies) acts as Secretary's representative and point of contact with lessees and/or operators concerning operations and compliance with lease terms, regulations and approved mining plans. Function involves assuring compliance with:

(i) production requirements such as diligent development and minimum production, royalty payments, and determination of logical mining units;

(ii) environmental performance standards and other mining plan requirements;

(iii) inspection and enforcement actions; and

(iv) non-mining functions outside the AO.

b. *Present responsibility of:* GS performs all functions except non-mining functions outside AO which are BLM's responsibility.

c. *Alternatives:*

1. GS to retain production functions, environmental and enforcement functions; BLM to retain non-mining functions outside the AO.

2. GS to retain production functions; OSM to assume environmental and related enforcement functions; and BLM to retain non-mining functions outside AO, including rights-of-way and ancillary activities related to mining.

d. *Decision:* We adopt alternative 2 because the environmental and enforcement functions are delegated to OSM under Section 201 of SMCRA. GS and BLM inspection in connection with GS and BLM functions shall be coordinated with OSM inspections, except BLM inspections outside the AO. GS makes royalty audits and other non-field inspections independent of OSM.

2. *Function:* Take necessary action in emergency environmental situations.

a. *Description of function:* (Agencies) has responsibility in emergency situations involving either imminent danger to public health or safety or where conditions, practices or violations of regulations or lease terms are causing or may cause significant, imminent environmental harm to land, air or water, or significant waste of the coal resource, to order cessation of such activities or violations and to order immediate remedial action.

b. *Present responsibility of:* GS and BLM

c. *Alternatives:*

1. GS and BLM to retain authority to act in emergency situations; OSM to also assume authority.

2. OSM to have primary emergency authority; BLM and GS to have such authority when OSM inspectors are unable to take action before-significant harm or damage will occur.

d. *Decision:* We adopt alternative 2 since this function applies only to emergency actions for environmental damage. GS and BLM will retain their present procedures for emergencies involving loss, waste, or damage to coal and other mineral resources and to other MLA functions.

3.*Function:* Conduct inspection prior to abandonment and specify and approve abandonment procedures.

a. *Description of responsibility:* Agency conducts an inspection upon receipt of notice of intention to abandon operations, specifies abandonment procedures, and approves final abandonment of operations.

b. *Present responsibility of:* GS with BLM confirmation of satisfactory reclamation of affected lands.

c. *Alternatives:*

1. GS to retain authority with BLM confirmation to inspect and approve abandonment of operations.
2. OSM to have primary authority to inspect and approve abandonment procedures and approve abandonment of operations with BLM concurrence with respect to approval of compliance with special requirements relating to protection of natural resources and post-mining land use of affected lands; and with GS concurrence with respect to compliance with production and coal resource recovery requirements. The abandonment inspection shall be a joint inspection by OSM, GS and BLM.

d. *Decision:* We adopt alternative 2 because this function coincides with other inspection and enforcement functions delegated to OSM by SMCRA. It preserves land management agency authority over lands under its jurisdiction and preserves GS authority to inspect for production requirements consistent with previous decisions. In order to avoid multiple final inspections, a joint final inspection will be conducted by BLM, GS and OSM with each agency inspecting for its particular area of concern.

4. *Function:* Release of performance bond.

a. *Description of function:* Upon a satisfactory showing that all mining and reclamation requirements of a lease and approved mining plan have been met, agency releases performance bond.

b. *Present responsibility of:* BLM.

c. *Alternatives:* At the present time, BLM has sole authority to grant release of performance bonds. The initial regulatory program under SMCRA does not include a performance bond requirement. A bond will be required in the permanent program by section 509 of the Act. Consequently, BLM should continue to exercise this authority with concurrence by OSM during the initial regulatory program.

d. *Decision:* BLM will continue to exercise bond release authority with OSM and GS concurrence during the initial regulatory program. This will be renegotiated at the time the permanent program is being developed.

I concur:

JOAN DAVENPORT, *Assistant Secretary, Energy and Minerals.*

GUY R. MARTIN, *Assistant Secretary, Land and Water Resources.*

WALTER N. HEINE, *Director, Office of Surface Mining.*

FRANK GREGG, *Director, Bureau of Land Management .*

H. WILLIAM MENARD, *Director, U.S. Geological Survey.*

APPENDIX C

PROPOSED UNSUITABILITY CRITERIA SELECTED BY THE UNDER SECRETARY

General Exception

Federal lands with coal which will be mined by underground mining methods will not be considered unsuitable for coal mining where the mining will result in no surface effects. Where underground mining will produce surface effects on Federal lands to which a criterion applies, those lands will be considered unsuitable unless the conditions exist to permit an exception. Surface effects include surface occupancy, subsidence, fire, and other environmental impacts of underground mining which are manifested on the surface.

1. *Federal Land Systems*

Criterion: All Federal lands included in the following land systems or categories and an appropriate buffer zone, if necessary, as determined by the land management agency, shall be considered unsuitable for coal mining: National Park System, National Wildlife Refuge System, National Systems of Trails, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Recreation Areas, and other Federally purchased recreation lands, Custer National Forest, and Federal lands in incorporated cities, towns, and villages. All Federal lands which are recommended for inclusion in such systems or categories by the Administration in legislative proposals submitted to the Congress or which are required by statute to be studied for inclusion in such systems or categories shall be considered unsuitable for coal mining.

Exception: A lease may be issued for underground coal mining within the Custer National Forest with the consent of the Department of Agriculture.

2. Rights-of-Way and Easements

Criterion: Federal lands that are within rights-of-way and easements and within surface leases for residential, commercial industrial, public purposes, and agricultural crop production over Federally-owned surface shall be considered unsuitable for coal mining.

Exceptions: A lease may include such areas if the land management agency determines that:

- (1) Coal development (e.g. underground mining) will not interfere with the purpose of the right-of-way or easement, or
- (2) The right-of-way or easement was granted for mining purposes, or
- (3) The right-of-way or easement was issued for a purpose for which it is not being used, or
- (4) The parties involved in the right-of-way or easement agree to leasing, or
- (5) It is impractical to exclude such areas due to the location of coal and method of mining and such areas can be protected through use of appropriate stipulations.

3. Buffer Zones Along Rights-of-Way and Adjacent to Communities and Buildings

Criterion: Federal lands affected by section 522(e) of the Surface Mining Control and Reclamation Act shall be considered unsuitable for coal mining. This includes lands within 100 feet outside of the right-of-way of a public highway or within 100 feet of a cemetery, and within 300 feet of an occupied building, school, church, community or institutional building or public park or within 300 feet of an occupied dwelling.

Exception: A lease may include mine access roads or haulage roads that join the right-of-way for a public road. Additionally, the Surface Mining Regulatory Authority may issue a permit to have public roads relocated. Finally, owners of occupied buildings may give permission to mine near the buildings.

4. Wilderness Study Areas

Criterion: Federal lands designated as wilderness study areas shall be considered unsuitable for coal mining while under review by the Administration and the Congress for possible wilderness designation. For any Federal land which is to be leased or mined prior to completion of the wilderness inventory by the land management agency, the environmental impact statement (or analysis) of the lease sale or mine plan must consider whether the land possesses the characteristics of a wilderness study area. If the finding is affirmative, the land shall be considered unsuitable for coal mining.

Exception: Issuance of noncompetitive coal leases and mining on leases may proceed if authorized by the Wilderness Act and the Federal Land Policy and Management Act of 1976.

5. Scenic Areas

Criterion: Scenic Federal lands designated by visual resource management analysis as Class I or II (areas of outstanding scenic quality and/or high visual sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable for coal mining.

Exception: A lease may be issued if the land management agency determines that coal mining will not significantly diminish or adversely affect the scenic quality of the designated area.

6. Lands Used For Scientific Studies

Criterion: Federal lands under permit by the land management agency, and being used, for scientific studies involving food and fiber production, natural resources or technology demonstrations and experiments shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued:

1. With the concurrence of the principal scientific user or agency, or
2. Where the mining could be done in such a way as not to jeopardize the purpose of the study as determined by the land management agency.

7. Historic Lands and Sites

Criterion: All districts, sites, buildings, structures, and objects of historic, architectural, archeological, or cultural significance which are included in or eligible for inclusion in the National Register of Historic Places, and an appropriate buffer zone around the outside boundary of the property (to protect the inherent values of the property that made it eligible for listing in the National Register) as determined by the land management agency, in consultation with the Advisory Council on Historic Preservation or by procedures approved by the Advisory Council, shall be considered unsuitable for coal mining.

Exceptions: Leasing may be allowed if the land management agency determines:

1. The site, structure, or object is of regional or local significance only with the concurrence of the State, or
2. In consultation with the Advisory Council on Historic Preservation, the direct and indirect effects of coal mining to properties on or eligible for the National Register of Historic Places will not result in significant adverse impacts to the site, structure, or object.

8. Natural Areas

Criterion: Federal lands designated as natural areas or as National Natural Landmarks shall be considered unsuitable for coal mining.

Exceptions: Leasing may be allowed in these areas or sites if the land management agency determines that:

1. The area or site is only of regional or local significance only with the concurrences of the State, or
2. The use of appropriate mining technology will result in no significant adverse impact to the area or site, or
3. The mining of the coal resource will enhance information recovery (e.g., paleontological sites).

9. Federally Listed Endangered Species

Criterion: Legally designated critical habitat for Federal threatened/endangered (T/E) plant and animal species, and habitat for Federal T/E species which is determined by the Fish and Wildlife Service and the land management agency to be of essential value and where the presence of T/E species has been scientifically documented, shall be considered unsuitable for coal mining.

Exception: Leasing may be allowed if, after consultation with the Fish and Wildlife Service, the land management agency determines the species habitat will not be adversely affected by coal development.

10. State Listed Endangered Species

Criterion: Habitats deemed critical or essential for plants and animal species listed by the State pursuant to State law as endangered or threatened shall be considered unsuitable for coal mining.

Exception: A lease may be issued if, after consultation with the State, the land management agency determines that the species will not be adversely affected by the coal development.

11. Bald and Golden Eagle Nests

Criterion: Bald and golden eagle nests that are determined to be active and a buffer zone of land in a 1/4 mile radius from the nests are areas which shall be considered unsuitable for coal mining, except that, during the non-breeding season, mining can be conducted within the buffer zone. Consideration of availability of habitat for prey species shall be included in the determination of buffer zones.

Exceptions: A lease may be issued if:

1. It can be conditioned in such a way, and during periods of time, that eagles will not be disturbed during breeding season, or
2. A permit or special approval is granted by the Fish and Wildlife Service to allow the eagle nest to be moved.

Buffer zones may be increased or decreased if the land management agency determines that the active eagle nests will not be adversely affected.

12. Bald and Golden Eagle Roost and Concentration Areas

Criterion: Bald and Golden Eagle roost and concentration areas used during migration and wintering shall be considered unsuitable for coal mining.

Exception: A lease may be issued if the land management agency determines that mining can be conducted in such a way, and during such periods of time, to ensure that eagles will not be adversely disturbed.

13. Falcon Cliff Nesting Sites

Criterion: Federal lands containing falcon cliff nesting sites with active nests and a buffer zone of Federal lands 1/4 mile radius from the nest to provide needed prey shall be considered unsuitable for coal mining, except that, during the non-breeding season, mining can be conducted within the buffer zone. Consideration of availability of habitat for prey species shall be included in the determination of buffer zones.

Exceptions: A lease may be issued if:

1. The land management agency determines that coal mining will not adversely impact the nesting sites during the breeding season, or
2. Nest sites may be moved with concurrence of the Fish and Wildlife Service.

Buffer zones may be increased or decreased if the land management agency determines the active falcon nests will not be adversely affected.

14. Migratory Birds

Criterion: Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the Federal land management agency and the Fish and Wildlife Service, shall be considered unsuitable for coal mining.

Exception: A lease may be issued where the land management agency, after consultation with the Fish and Wildlife Service, determines that coal mining will not adversely impact the migratory bird habitat during periods when such habitat is used by the species.

15. State Resident Fish and Wildlife

Criterion: Federal lands which the land management agency and the State jointly agree are fish and wildlife habitat for resident species of high interest to the State and which are essential for maintaining these priority wildlife species shall be considered unsuitable for coal mining.

Such lands shall include:

- Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken.
- The most critical winter ranges for deer, antelope and elk.
- Migration corridors for elk.

Such lands may include appropriate buffer zones as determined jointly by the land management agency and the State.

Exceptions: A lease may be issued if:

1. It is demonstrated that complete mitigation is possible; or
2. Following discussions between the State wildlife agency and the Federal land management agency, the Federal land management agency determines that the species being protected will not be adversely affected by the mining activity.

16. Wetlands

Criterion: Federal lands containing: (1) inland lakes, impoundments, and associated wetlands; (2) inland shallow, predominantly vegetated wetlands; or (3) riverine wetland systems, lower perennial and upper perennial systems with flow greater than 5 cubic feet per second and riparian zones in a "relatively undisturbed" state that are larger than one linear mile along a riverine system, shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued where the land management agency determines that:

1. The use of appropriate mining or reclamation technology will not significantly affect the wetlands or will provide for complete restoration, or
2. The wetlands contain no significant values for groundwater recharge, fish and wildlife habitat, recreation or scientific study.

17. Floodplains

Criterion: Riverine, coastal, and special floodplains (100-year recurrence interval) shall be considered unsuitable for coal mining.

Exception: Leasing may be allowed where the land management agency determines that:

1. Leasing a particular tract is the only practicable alternative, and
2. Potential for harm to people or property and natural and beneficial values of floodplains can be minimized through use of demonstrated and available mining and mitigation measures.

18. Municipal Watersheds

Criterion: Federal lands which have been committed by the land management agency to use as municipal watersheds shall be considered unsuitable for coal mining.

Exception: Leasing may be allowed where:

1. The land management agency determines that mining will not adversely affect the watershed to any significant degree, and
2. The municipality or water users concur in the issuance of the lease.

19. National Resource Waters

Criterion: Federal lands with National Resource Waters, as identified by States in their water quality management plans, and a buffer zone of Federal lands 1/4 mile from the outer edge of the far banks of the water, shall be unsuitable for coal mining.

Exception: The buffer zone may be eliminated or reduced in size where the land management agency determines that it is not necessary to protect the National Resource Waters.

20. State Lands Unsuitable

Criterion: A buffer zone of Federal lands necessary to provide protection for any adjacent area designated as land unsuitable for mining by the State shall be considered unsuitable for coal mining.

Exception: The buffer zone may be modified or eliminated where the land management agency, in consultation with the State, determines that all or parts of the zone are not necessary to protect the designated area.

21. State Proposed Criteria

Criterion: Federal lands in a State to which is applicable a criterion (i) proposed by the State, and (ii) adopted by rulemaking by the Secretary of the Interior, shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued:

1. For any area, irrespective of the applicability of the State-nominated criterion, if such criterion is adopted by the Secretary less than 12 months prior to the publication of the draft land use plan which includes such area.
2. Where the land management agency, in consultation with the State, determines that, although the criterion applies, mining will not adversely affect the value which the criterion would protect.

22. Prime Farm Lands

When the land management agency, with the concurrence of the Secretary of Agriculture (Soil Conservation Service), identifies Federal lands having prime farm land soils, such lands shall be considered unsuitable for coal mining.

Exceptions: A lease may be issued when:

1. Conditions such as soil rockiness, angle of slope or historic or other conditions leading to a negative determination under permanent regulations of the Office of Surface Mining Reclamation and Enforcement (OSM) are present; or
2. Scientific studies show that crop yields equivalent to pre-mining crop yields on non-mined prime farm lands in the surrounding area under equivalent levels of management could be obtained and that an operator or potential operator could meet the soil reconstruction standards in section 515(b)(7) of the Surface Mining Control and Reclamation Act (SMCRA) and OSM's permanent regulations.

23. Alluvial Valley Floors

federal lands identified by the land management agency, with the concurrence of the State in which they are located, as alluvial valley floors according to the definition and standards of the SMCRA, the regulations, final alluvial valley floor guidelines, and approved State programs, where mining would interrupt, discontinue, or preclude farming shall be considered unsuitable for coal mining. Additionally, when mining Federal land outside an alluvial valley floor would materially damage the quantity or quality of water in surface or underground water systems that would supply alluvial valley floors, that land shall be considered unsuitable for coal mining.

Exception: A lease may be issued where mining would not interrupt, discontinue, or preclude farming on land to which the first sentence of the criterion applies.

24. Reclaimability

As information regarding reclaimability on a local or regional basis becomes available, the land management agency shall use such information to determine if areas of Federal land are reclaimable to the standards of SMCRA, the regulations, and approved State programs. Examples of information on reclaimability would be soil studies, hydrologic studies, and studies concerning revegetation. If any area is determined not to be so reclaimable, such area shall be considered unsuitable for coal mining.

Exception: A lease may be issued upon presentation of information which contains results of studies showing that reclamation is possible to the standards of the SMCRA, the regulations, and approved State programs, including State regulations.

[FR Doc. 78-34391 Filed 12-7-78; 8:45 am]

BILLING CODE [4310-17-M]