

Coal Chapters 11 & 20 and Noncoal Chapters 6 & 12

TAKINGS CHECKLIST

	CRITERIA	YES	NO
1.	Does the action affect private property? (If no, no further inquiry is necessary.)	X	
2.	Is the action mandated by State or federal law? (If yes, go to question 3. If no, go to question 4.)		X
3.	Does the proposed action advance a statutory purpose?		
4.	Does the action result in permanent occupation of private property?		X
5.	Does the action require the property owner to dedicate property or grant an easement?		X
6.	Does the regulatory action interfere with the owner's investment-backed expectations?		X
7.	Does the character of the government action balance the public interest and private burdens?	X	
8.	Does the action deprive the owner of all economically viable uses of the property?		X
9.	Does the action have a significant impact on the landowner's economic interest?		X
10.	Does the action deny the owner a fundamental attribute of ownership?		X
11.	Does the action serve the same purpose that would be served by directly prohibiting use of the land?		X
12.	Could the problem which has necessitated the action be addressed in a less restrictive manner?		X

If these questions are answered yes, legal counsel should be consulted, for it is possible the proposed action will be a taking.

LAND QUALITY DIVISION (LQD)
Coal Chapters 11 (Self-bonding) & 20 (Letters of Credit)
Noncoal Chapters 6 (Self-bonding) & 12 (Letters of Credit)
TAKINGS ANALYSIS

1. Private Property Affected? – YES

The proposed revisions allow for the use of real property collateral reclamation bonds in Coal Chapter 11 and Noncoal Chapter 6.

2. Mandated by State/Federal law? – NO

The proposed revisions to Coal Chapter 18 were initiated by the LQD and are intended to update the rules to facilitate more efficient review of permitting actions and provide consistency with the LQD's new Uranium Recovery Program.

3. Advance Statutory Purpose? – NO

NA

4. Permanent Occupation of Private Property? – NO

The proposed regulations do not result in a permanent occupation of private property because they regulate reclamation bonds which have a finite duration.

5. Dedication of property of grant an easement? – NO

The proposed rules do not require a property owner to grant any dedications of property or grant an easement to the property.

6. Action interfere with investment-backed expectations? – NO

The proposed rules regulate an already heavily regulated industry and do not impose additional substantial burdens to mining operations. The rules are also intended to increase the number of acceptable bonding instruments, thereby reducing the burden on the regulated community.

7. Does character of government action balance public interest and private burdens? – YES

The proposed rules impact the mining operations and their required reclamation bonds (private) while protecting the public interests in the environment by ensuring that funds are available for reclamation in the event of forfeiture (public). The proposed rules are intended to provide greater flexibility to mine operators by increasing the available bond instrument types while also increasing the stability of reclamation bonds posted in the event of forfeiture.

8. Action deprive owner of all economically viable uses of the property? – NO

The proposed revisions to the financial assurance regulations only apply to property that is used for mining operations. The proposed rules do not preclude any other uses of the property.

9. Does the action have a significant impact on the landowner's economic interest? – NO

The proposed rules would not significantly impact the landowner's economic interest unless real property was pledged as collateral for a reclamation bond and that bond was forfeited. While there may be instances where a landowner's real property collateral would be forfeited that choice is left to the mining operator as there are numerous other methods for securing the reclamation bond. It should also be noted that the proposed rules only address one possible use of the real property as collateral and is therefore narrowly tailored to minimize impacts to a landowner's economic interest and allows a landowner to efficiently develop the mineral resources present.

10. Does the action deny the owner a fundamental attribute of ownership? – NO

The proposed rules do not deny the owner a fundamental attribute of ownership. The landowner would have to voluntarily subject themselves to the regulations by engaging in a mining operation and pledging real property as collateral.

11. Action serve same purpose that would be served by prohibition on use of land? – NO

The proposed rules are intended to provide increased flexibility in the types of reclamation bonds that may be filed in support of a mining operation.

12. Could be addressed in less restrictive manner? – NO

The proposed rules are intended to increase the flexibility of a mining operator to secure a reclamation bond.