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U·S·DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

DIRECTIVES SYSTEM

Subject Number: REG-8

Transmittal Number: 554

Date: JUL 6 1989

Subject: Oversight of State Regulatory and State and Tribal Abandoned Mine Land Reclamation Programs

Approval: [signature] **Title:** Director

1. PURPOSE. This directive establishes policies, procedures, criteria and responsibilities for conducting oversight of State regulatory and State and Tribal abandoned mine land reclamation (AMLR) programs.

2. APPLICABILITY.

a. General. This directive applies to all persons and OSMRE organizational units involved in oversight of State regulatory and AMLR programs.

b. Prototype States. Certain States will be experimenting with various regulatory program oversight alternatives during Evaluation Year 1990. Field Offices for these States shall fully comply with this directive when overseeing AMLR programs. For the regulatory programs in these States, Field Offices shall adhere to the provisions concerning the evaluation file, quarterly workplan progress reports and the annual evaluation report. The remainder of this directive shall be used as general guidance when appropriate.

3. SUMMARY OF CHANGES. Since this directive was last revised on July 15, 1988, the following changes have been made in the appendix:

a. Workplans.

(1) Require opportunity for State involvement in workplan development (minimum 20-day comment period) and require that the final version be provided to the State.

(2) Reduce oversight cycle from four to three years.

(3) Modify and standardize workplan formats.

(4) Include standardized list of subelements, all of which must be addressed by the three-year plans.

(5) Add requirement that methods of evaluating overall reclamation success be included in the annual workplan.

(6) Delete requirement that workplan revisions be processed like new workplans.

(7) Clarify that, except as the need for such reviews is known at the time of workplan preparation, Level II evaluations shall be addressed separately as revisions to the annual workplan

whenever the need for such evaluations is identified, thus facilitating continuous oversight and prompt problem resolution.

(8) Add a requirement for quarterly status reports on Field Office progress in achieving workplan goals. These reports shall also summarize all revisions.

b. Procedures.

(1) Delete issue and concern letters in favor of element-specific and trend analysis reports with the same information content. These reports shall be provided to the State in lieu of such letters.

(2) Delete Evaluation Level III and add the option of requesting technical assistance as part of Evaluation Levels I and II.

(3) Clarify distinctions between Evaluation Levels I and II and their use. Classify all reviews of technical topics as Level II evaluations.

(4) Emphasize that the Field Office Director shall provide the State with the opportunity to meet at least quarterly at the agency head/supervisory level.

c. Program Elements.

(1) Reduce the number of areas to be evaluated under the "Program Administration" element of both the AMLR and regulatory programs, principally by eliminating organizational evaluations.

(2) Delete the "Oversight Techniques" sections.

(3) Add a requirement that overall reclamation success be evaluated as a separate regulatory program element.

(4) Condense and reorganize the AMLR program elements, deleting all provisions which could be construed as authorizing duplicative reviews of subjects that should be addressed during the review process for grant applications and reports.

d. Annual Report.

(1) Add a requirement that the overall reclamation success of both the AMLR and regulatory programs be specifically addressed in the "Executive Summary."

(2) Modify the program element report format to promote more efficient use of space and allow it to be expanded to two pages when necessary.

(3) Modify tables to:

(a) Add data on abandoned sites.

(b) Increase amount of information pertaining to bond forfeitures and alternative bonding systems.

(c) Add a requirement to report grant funding levels requested by the States.

4. DEFINITIONS.

a. Oversight. The process of evaluating and assisting States and Tribes in the administration, implementation and maintenance of approved regulatory and abandoned mine land reclamation programs.

b. State program. A State-administered program, approved by the Secretary under section 503 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State. Where a cooperative agreement governing mining on Federal lands has been approved under section 523 of SMCRA, that agreement is considered part of the State program. For purposes of this directive, this term also includes State and Tribal abandoned mine land reclamation (AMLR) plans approved under section 405 of SMCRA.

5. POLICY/PROCEDURES.

a. Responsibilities.

(1) Assistant Director, Program Policy (AD/PP).

(a) Develops, clarifies and revises national oversight policies, standards and procedures.

(b) Analyzes the results of implementing oversight policies, standards and procedures to ensure that the objectives of SMCRA are achieved.

(c) Coordinates with the Assistant Directors for Finance and Accounting and Information Systems Management concerning oversight issues and activities affecting their areas of expertise and responsibility.

(2) Assistant Director, Field Operations (AD/FO).

(a) Ensures that oversight activities are planned, conducted, monitored and reported in accordance with national policies, procedures and guidance.

(b) Consistent with national policy, procedures and standards, develops supplemental oversight policies, procedures and guidance to address issues of a local or regional nature arising from implementation of the national guidance. This shall not be construed as authorizing deletions from the national guidance.

(c) Provides Field Offices with the technical and other assistance necessary to support oversight activities.

(3) Field Office Director (FOD).

(a) Plans and conducts oversight activities and prepares related documents and reports in accordance with national and regional policies and procedures.

(b) Develops procedures consistent with both national and regional oversight policies to carry out day-to-day operations.

(c) Requests technical and other assistance when necessary to properly conduct oversight activities.

(d) Interacts with outside and special interest groups, such as State and local coal associations and citizen and environmental organizations, to determine their areas of concern.

b. Procedures. Oversight activities shall be planned, conducted and reported in accordance with this directive, its appendix and all other relevant directives and supplemental guidance.

6. REPORTING REQUIREMENTS.

a. Three-year oversight workplan, revised annually (FOD to AD/FO and AD/PP).

b. Annual oversight workplan (FOD to AD/FO and AD/PP).

c. Quarterly workplan progress reports (FOD to AD/FO).

d. Annual evaluation report (FOD to AD/FO, AD/PP and Deputy Director, Operations and Technical Services).

7. EFFECT ON OTHER DOCUMENTS. Supersedes Directive REG-8, "Oversight of State Regulatory Programs and State and Tribal Abandoned Mine Land Reclamation Programs," Transmittal Number ~~384~~ 466, dated July 15, 1988.

8. REFERENCES.

a. Directive INF-1, "Policy and Procedural Guidelines for OSMRE Records Management Systems."

b. Directive REG-23, "Development and Implementation of Action Plans."

9. EFFECTIVE DATE. Upon issuance.

10. CONTACT. Chief, Division of Regulatory Programs; (202) 343-5351.

11. KEYWORDS: State program, evaluation, annual report, workplans.

12. APPENDIX.

"Procedures and Criteria for the Evaluation of State/Tribal Regulatory and Abandoned Mine Land Reclamation Programs under the Surface Mining Control and Reclamation Act of 1977."

Appendix to Directive REG-8

PROCEDURES and CRITERIA

for the EVALUATION of STATE/TRIBAL

REGULATORY and ABANDONED MINE LAND RECLAMATION PROGRAMS

under the Surface Mining Control

and Reclamation Act

of 1977

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I. Background and Purpose.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) requires the development and implementation of programs to regulate surface coal mining and reclamation operations and reclaim lands damaged by mining activities prior to SMCRA. SMCRA encourages States to assume the primary responsibility for regulating mining activities (primacy) and authorizes those States with primacy to submit and gain approval of abandoned mine land reclamation (AMLR) plans and receive full Federal funding of activities conducted pursuant to those plans. In addition, Congress amended SMCRA in 1987 to authorize the Navajo, Hopi and Crow Tribes to submit and gain approval of AMLR programs.

Section 201 of SMCRA established the Office of Surface Mining Reclamation and Enforcement (OSMRE) to administer and implement the Act. Among its responsibilities, the agency is charged with promoting the achievement of program goals and objectives, ensuring adherence to Federal and State statutory and regulatory requirements and maintaining minimum nationwide mining and reclamation standards.

This document furthers these purposes by establishing procedures and general criteria for the evaluation of regulatory and AMLR programs approved under SMCRA. In addition, this document:

- Defines the elements of regulatory and AMLR programs subject to oversight;
- Defines the respective roles and responsibilities of OSMRE and the States in carrying out regulatory and AMLR programs; and
- Establishes the format for OSMRE's annual report to Congress on the status of program administration by the States.

II. Procedures.

A. General Approach.

Oversight shall be conducted as an ongoing process involving continuous evaluation of State performance, not as an annual end-of-year exercise. Emphasis shall be placed on prevention, detection and prompt correction of problems. To facilitate problem resolution, constructive working relationships with State personnel shall be cultivated.

B. Definitions.

Level I Evaluation. The minimum level of detail needed to adequately monitor the State's overall administration of its approved program and reclamation plan. This will primarily, but not exclusively, involve the conduct of random sample and other required

inspections and review of data and documents routinely supplied or made available to the Field Office by the State.

Level II Evaluation. An in-depth review of a specific program area resulting from potential problems identified during the Level I evaluation process or concerns raised by the public. Also, any in-depth review, i.e., a review conducted outside the random sample or other required inspection process, of a technical topic, e.g., permitting/construction/stability of excess spoil disposal structures, prime farmland reclamation, cultural resource management, effectiveness of hydrologic reclamation plans, actual versus predicted performance of topsoil substitutes, etc.

Conclusion. A positive or negative determination regarding the State's performance. Conclusions shall be based on discernible trends rather than isolated deficiencies.

C. Oversight Workplans.

As a part of the planning phase of oversight, each Field Office Director (FOD) shall annually develop a workplan for each State presenting a general strategy for conducting oversight during the next three years and detailing the oversight activities to be conducted during the upcoming evaluation year. The workplan must address all known, ongoing or unresolved problems and concerns. In addition, the FOD shall consider any comments or concerns identified by interest groups or citizens or environmental organizations pursuant to the survey and interaction required by Section 5.a.(3)(d) of Directive REG-8.

1. Three-Year Workplan.

The 3-year workplan shall include the following items in a format similar to that presented in Part III of this document:

- A list of all program elements and subelements. The AD/FO, at the request of the FOD, may approve additions to (but not deletions from) the standardized list.
- The year(s) that each element/subelement is to be examined.
- The basis for that frequency.

In determining the frequency at which each program element will be reviewed, the FOD must consider, and the plan must reflect, the State's past performance and the likelihood of significant changes in performance or activity levels. Some program elements will need to be examined every year while others may require examination only once every two or three years. For example, if (1) a State has historically had very few requests for small operator assistance, (2) past oversight reviews have found State performance to be satisfactory, and (3) there is no indication that significant

changes in performance or activity levels are likely to occur, then this program element may need to be examined in detail only once every three years. The 3-year workplan does not lock the Field Office into a strict schedule; rather it provides a general long-term plan for the examination of all program elements. It also documents the basis for the frequency of review of each program element or subelement.

2. Annual Workplan.

The annual workplan must describe in detail how each program element/subelement scheduled to be examined in the pending year will be reviewed. The basis and methodology for each review shall be clearly stated. Unless the need for Level II evaluations (either programmatic or technical) is known at the time of preparation, the annual workplan shall include only Level I evaluations. As concerns necessitating Level II evaluations develop during the year, the workplan shall be modified accordingly. Resolution of these concerns shall not be delayed until the succeeding evaluation year.

The annual workplan shall include the following items in a format similar to that presented in Part III of this document:

- Identification of the program elements/subelements to be examined and the frequency at which they will be reviewed throughout the year.

- Identification of any Level II evaluations (including technical topics) for which the need is known, and the basis for such evaluations.

- A concise but complete description of the evaluation technique, including the period for which State actions will be reviewed and the population and sample sizes.

- Any technical or other assistance requested from the Assistant Director for Field Operations (AD/FO).

- An explanation of the means by which the Field Office will evaluate overall reclamation success and other end results of the State regulatory and AMLR programs.

3. Procedural Requirements.

To the extent practical, both the annual and the 3-year workplans shall be prepared in cooperation with the State. At a minimum, the State shall be allowed a 20-day comment period.

Proposed workplans must be submitted to the AD/FO for review 60 days prior to the start of each evaluation year. The FOD shall concurrently provide a copy of the plans to the Assistant Director for Program Policy (AD/PP) for review. Any AD/PP comments shall be

sent to the AD/FO within 20 days of receipt. Within 40 days of receipt of the plans, the AD/FO either shall approve them or return them for revision. The FOD shall promptly provide a copy of the approved plans to the State.

Since oversight is an ongoing process, the annual workplan will most likely require revision during the evaluation year because of new concerns and resource fluctuations. Copies of any such revisions shall be provided to the AD/FO for review and comment, and, in the case of proposed Level II evaluations, approval.

Within 15 days of the close of each calendar quarter, the FOD shall, in conjunction with the action plan status report required by Directive REG-23, provide the AD/FO with a report summarizing Field Office progress in achieving workplan goals. These reports shall also summarize all workplan revisions. The AD/FO shall provide a consolidated version of these reports to the AD/PP in concert with the summary status reports required by Directive REG-23.

D. Conduct of Oversight Activities.

1. Data Collection and Analysis.

Data and documents routinely supplied to OSMRE by the State shall be analyzed on a reasonably continuous basis to identify any trends concerning program administration and implementation. Similarly, data collected on random sample and other routine inspections shall be analyzed frequently (at least quarterly) to identify any trends in State performance.

Whenever OSMRE finds it necessary to examine files, documents or other information located at a State office, the reviewer shall first examine all information available in the Field Office in preparation for the review. Reviews shall be consolidated and conducted in a manner that minimizes disruption of State operations.

Establishment of State internal control systems and common OSMRE-State databases is strongly encouraged to maximize consistency, minimize duplicative efforts and reduce the need for document reviews, although verification and validation of data will still be necessary. To the extent practical, with respect to regulatory program elements, the sites selected for random sample inspections shall constitute the sample used for data validation and other evaluation purposes. All documents and data pertaining to a site since the last oversight evaluation of that subject area shall be reviewed.

In general, reviews of program elements shall consist of a Level I evaluation of whether all necessary systems are in place and operating as approved. Level II evaluations should be performed only when inspection findings or other evidence suggest the existence of a deficiency which cannot otherwise be confirmed or

disproved, or when necessary to evaluate overall reclamation success or other end results of program implementation.

Whenever Level II evaluations are necessary, the scope and methodology of the evaluation shall be discussed with the State prior to the review. To avoid any possible misinterpretation of the State program or misrepresentation of State actions, conclusions resulting from oversight activities (either Level I or Level II) shall be discussed informally with the State, either in person or by telephone. In addition, to avert the development of significant problems, the Field Office shall, immediately following observation of any irregularities or incipient trends, informally discuss them with the State.

2. Element-Specific Evaluation Reports.

Upon completion of a discrete review (either Level I or II) of a program element, the FOD shall prepare a detailed evaluation report containing the following items:

- Date of the oversight activity and the period evaluated.
- Program element/subelement/technical topic reviewed.
- Scope of the oversight activity and the State activities examined.
- All identified conclusions, both positive and negative.
- Facts supporting the conclusions.
- Actual or potential impact or significance of any deficiencies.
- Specific corrective action, if any, required or recommended.
- If appropriate, an offer of technical or administrative assistance.

Records shall be maintained of all OSMRE personnel involved in the review and all State personnel contacted. Where OSMRE personnel outside the Field Office have participated in the review, they shall be afforded an opportunity to review and comment on the report in draft form. The FOD also shall solicit comments from the AD/FO prior to the report's transmittal to the State.

Similarly, when the Field Office identifies problems through the continuous process of trend analysis, the FOD shall formally convey these findings to the State in a report containing the items listed above. An informational copy of the report and transmittal letter shall be provided to the AD/FO.

III. Workplan Formats.

[Note: The AD/FO may alter the format of these forms to request additional information and otherwise meet regional needs, provided no informational requirements or categories are deleted.]

A. Annual Workplan.

The FOD shall complete one of these forms for each program element, subelement or technical topic to be reviewed during the evaluation year.

B. Three-Year Workplan.

The FOD shall complete this form as indicated and provide a supplemental statement explaining the basis for the review frequency for each program element/subelement. The "Overall Reclamation Success" element must be evaluated every year.

ANNUAL WORKPLAN

[State]

Element [or Technical Topic]:

Subelement:

Population size:

Sample size:

Evaluation level: ___ I ___ II [Check the one that applies.]

Frequency of review: [Check the one that applies.]

___ Semiannual

___ Quarterly

___ Continuous

___ Other [specify]

Basis for review if Level II: [Check all that apply.]

___ Inspection findings

___ Public concern

___ Evaluation of overall reclamation success

___ Other [specify]

Projected completion date:

Outside expertise needed:

Review technique (methodology):

THREE-YEAR WORKPLAN (REGULATORY PROGRAM)

[Instructions: Enter an "x" to indicate the year(s) each element/subelement will be evaluated. Attach a document explaining the basis of the expected evaluation frequency for each element/ subelement. If a specific element or subelement is not applicable within a particular State, provide a footnote explaining why this is the case.]

Element/Subelement	Evaluation Year		
	1990	1991	1992
A. Permitting Actions			
1. Processing of new mining permit applications			
a. Administrative completeness			
b. Public notice/availability/consideration of comments			
c. Solicitation/consideration of comments from governmental agencies and SHPO			
d. Baseline data			
e. Mining and reclamation plan			
f. Subsidence control plan			
g. PHC/CHIA			
h. Liability insurance			
i. Written findings/documentation/ terms and conditions			
j. AVS checks and permit blocking			
2. Processing of exploration applications			
a. Completeness			
b. Public notice/consideration of comments			

Element/Subelement	Evaluation Year		
	1990	1991	1992
c. Justification for tonnage removal, use or sale or exploration on lands unsuitable for mining			
d. Written findings/documentation			
3. Processing of notices of intent to explore			
4. Processing of applications for permit revisions, transfers, sales and assignments			
a. Determination of significance (revisions only)			
b. Public notice (if applicable)/ consideration of comments			
c. PHC/CHIA reevaluation (revisions only)			
d. Written findings/documentation			
5. Processing of permit renewal applications			
a. Completeness			
b. Public notice/consideration of comments			
6. Conduct of midterm and other reviews required by 30 CFR 774.11			

Element/Subelement	Evaluation Year		
	1990	1991	1992
B. Performance Bonds			
1. Tracking and security systems			
2. Computation and adequacy			
3. Verification of bond validity/ value/lack of restrictions			
4. Alternative bonding system			
5. Adjustments and replacements			
6. Processing of bond release applications			
a. Public notice/notification of interested parties/ consideration of comments			
b. Documentation of adequacy of remaining bond			
c. Evaluation of reclamation success			
7. Forfeiture			
a. Procedures			
b. Collection and litigation			
c. Site reclamation			

Element/Subelement	Evaluation Year		
	1990	1991	1992
C. Inspections			
1. Frequency			
2. Inspection reports			
a. Completeness			
b. Documentation of site conditions/violation status/ context			
c. Narrative continuity with prior reports			
d. Documentation of mine status			
3. Maintenance of inspectable units list and inspection database			
4. Citizen complaints			
D. Enforcement			
1. Identification and citation of violations			
2. Notices of violations and cessation orders			
a. Timeliness of issuance and termination			
b. Appropriateness of remedial measures and abatement periods			
c. Documentation of reasons for modifications, terminations and vacations			

Element/Subelement	Evaluation Year 1990	1991	1992
2. Pattern of violations reviews/ show cause orders/hearings			
3. Timeliness and effectiveness of alternative enforcement actions			
4. Responses to ten-day notices			
E. Civil Penalties			
1. Procedures			
2. Documentation of assessments, waivers and adjustments			
3. Maintenance of enforcement value			
a. Blocking of new permits if penalties unpaid			
b. Collection efforts			
F. Administrative and Judicial Review			
1. Review procedures			
a. Notification of rights			
b. Escrowing of penalties			
c. Timeliness of hearings and decisions			
d. Documentation of decision rationale			
2. Appeal or remediation of adverse decisions			
3. Cost recovery procedures and decisions			

Element/Subelement	Evaluation Year 1990	1991	1992
G. Designation of Lands Unsuitable for Mining			
1. Processing of petitions			
2. Maintenance of database and inventory system			
H. Blaster Certification			
1. Training			
2. Certification			
3. Suspension and revocation			
I. Small Operator Assistance			
1. Application review/ verification of eligibility			
2. Contract monitoring			
3. Reimbursement monitoring/ procedures			
4. Laboratory certification			
J. Program Amendments			
1. Notification of program changes			
2. Responses to Part 732 notifications			
3. Promulgation and implementation of approved amendments			

Element/Subelement	Evaluation Year 1990	1991	1992
K. Program administration			
1. Grants management			
a. Drawdowns and disbursements			
b. Accounting procedures			
c. Timeliness of applications and reportd			
d. Maintenance of internal controls			
e. Audits/implementation of recommendations			
f. Procurement and management of property and services			
2. Data management			
3. Coordination with other agencies			
4. Identification and resolution of conflicts of interest			
L. Overall reclamation success	X	X	X

THREE-YEAR WORKPLAN (AMLR PROGRAM)

[Instructions: Enter an "x" to indicate the year(s) each element/subelement will be evaluated. Attach a document explaining the basis of the expected evaluation frequency for each element/subelement. If a specific element or subelement is not applicable within a particular State or Tribe, provide a footnote explaining why this is the case.]

Element/Subelement	Evaluation Year		
	1990	1991	1992
A. Project Planning			
1. Inventory maintenance			
2. Consideration of public comments			
3. Interagency coordination			
4. Consideration of experience with design alternatives			
5. Rights of entry			
6. Lien eligibility determinations			
B. Project Construction			
1. Construction management			
2. Postconstruction monitoring/ evaluation/maintenance			
3. Lien recording and maintenance			
4. Emergency investigations and abatement efforts			

Element/Subelement	Evaluation Year		
	1990	1991	1992
C. Program Administration			
1. Grants management			
a. Drawdowns and disbursements			
b. Accounting procedures			
c. Timeliness of applications and reports			
d. Maintenance of internal controls			
e. Audits/implementation of recommendations			
f. Procurement and management of property and services			
2. Data management			
3. Coordination with other agencies			
4. Management and disposal of abandoned mine lands			
5. Subsidence insurance program management			

IV. Regulatory Program Elements and Evaluation Criteria.

This section lists the regulatory program elements subject to oversight. It also includes general criteria for use in evaluating each element. Except where supplemented by this section, the specific standards and criteria used to evaluate State performance shall be those set forth in the approved State regulatory program.

A. Permitting Actions.

SMCRA requires that persons desiring to conduct surface coal mining and reclamation operations and certain coal exploration activities first obtain permits to do so. The permit must contain information adequate to enable the regulatory authority to evaluate the operator's ability to comply with all program requirements. Permit applications are subject to public notice procedures and must contain adequate legal, compliance and right-of-entry information to protect the rights of surface landowners and other persons with a legal interest in the affected lands. Proper permit application review, including adequate technical analyses and documented findings by the regulatory authority, is critical to protection of the public from the adverse effects of such mining operations. Technically complete and accurately prepared permits detail how surface coal mining will be conducted to protect the environment. Planning of the mining activity will help to ensure that reclamation is conducted as contemporaneously as possible after removal of the coal resource.

Approved State permits shall be reviewed on an ongoing basis by OSMRE reclamation specialists in preparation for random sample inspections. Technical evaluation topics shall be selected on the basis of inspection findings, concerns of outside interest groups, citizen complaints, or other indicators of actual or potential environmental problems or failure to adhere to public participation requirements. In addition, the Field Office shall evaluate permitting decisions, procedures and related actions on a cyclical basis to ensure compliance with the State program. Permits and related documents selected for review shall include only those issued since the last review of the subject area. To the extent possible, the sample selected shall coincide with that chosen to meet random sample inspection requirements.

Review of any topic should include the data submitted by the permit applicant; the regulatory authority's analytical techniques, assumptions and conclusions; and the findings upon which application approval was based. Where on-site evaluations are deemed necessary, they shall be coordinated with random sample inspections to the maximum extent possible. Permit renewals, modifications, midterm reviews, revisions, transfers, sales and assignments of rights shall be reviewed if pertinent to the topic selected. Reviewers shall accord discretion to alternative technical approaches selected or approved by the State and shall not mandate the use of any particular analytical or reclamation technique. Each State is free to choose professionally acceptable design criteria and methods that result in adequate reclamation in accordance with the State program.

Evaluation and oversight of permitting activities shall be based on the State's adherence to its approved program with emphasis on the following criteria:

1. Issuance of permits that meet all requirements of the regulatory program, as evidenced by approved permits that:

   a. Are administratively complete.

   b. Contain baseline hydrologic, geologic, archaeological, historic and other information concerning the site and adjacent area in sufficient detail to fully describe premining conditions and assess the probable impacts of mining on the environment.

   c. Contain mining and reclamation plans (and, for underground operations, subsidence control plans) in the detail necessary to demonstrate that reclamation can be accomplished in accordance with program requirements, together with all pertinent plan and design certifications.

   d. Contain a determination of the probable hydrologic consequences of mining accompanied by the regulatory authority's assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area.

   e. Include documentation of an adequate public liability insurance policy prior to issuance.

   f. Are accompanied by the written findings required of the regulatory authority by the program and documentation of the basis for these findings.

   g. Contain all terms and conditions required by the program.

2. Processing of applications for permits, revisions, renewals, transfers, sales and assignments of rights in accordance with program requirements.

3. Processing of applications for coal exploration and notices of intent to explore in accordance with program requirements, including documentation of the need for coal removal, use or sale or exploration on lands designated as unsuitable for mining.

4. Adherence to public notice requirements and other provisions encouraging public participation, as evidenced by:

   a. Submission of proof of publication of newspaper notices for all applications prior to approval.

   b. Availability of applications for public review.

   c. Solicitation of comments from local governments, the State

Historic Preservation Officer (SHPO) and other interested agencies in accordance with program requirements.

d. Documented consideration of all public, agency and SHPO comments (including informal conference records) during the decisionmaking process.

e. Following a decision on an application, prompt notification of interested parties in accordance with program requirements.

5. Maintenance of permit adequacy, as evidenced by timely midterm and special-purpose permit reviews, with revisions required as necessary for the permit to remain in compliance with all program requirements.

6. Use and maintenance of the applicant/violator system to ensure that permits are not issued to persons responsible for outstanding unabated violations.

B. Performance Bonds.

Section 509 of SMCRA establishes requirements for performance bonds for surface coal mining and reclamation operations. Bonds are essential to guarantee reclamation if an operator does not or cannot complete the reclamation plan. SMCRA allows various types of performance bonds but requires the amount of the bond to be adequate for a third party to complete the reclamation plan if forfeiture occurs. Liability periods vary, depending chiefly upon the revegetation responsibility period.

Section 519 of SMCRA provides for the release of performance bonds concurrent with the achievement of specified reclamation phases. Specific application, public notice and documentation requirements must be met before partial or full bond release may be granted.

Bond forfeiture is the final means of ensuring that the environment will be protected from the adverse effects of surface coal mining operations. It should supplement, not replace, efforts to compel the operator to complete all reclamation obligations. When necessary, forfeiture should result in timely and complete reclamation.

Evaluation and oversight of permanent program bonding activities shall be based on State program requirements with emphasis on the criteria listed below. Since SMCRA does not require that initial program sites be bonded, evaluation of State performance with respect to bonds posted for such sites shall be based on the applicable State initial program requirements.

1. Administration of a bonding program which results in adequate performance guarantees as evidenced by the regulatory authority's:

    a. Maintenance of a system to track the status of all bonds and maintain the security of instruments held by the regulatory authority.

    b. Computation of bond amounts designed to ensure that the bond will be adequate for the regulatory authority to complete the reclamation if the operator fails to do so.

    c. Evaluation of the validity, value and restrictions placed on all instruments posted as bond.

    d. Evaluation of bond terms and conditions to ensure that the period of reclamation liability is fully covered by one or more bonds.

    e. Periodic evaluation of the viability of any alternative bonding system and initiation of any necessary corrective measures subsequently deemed appropriate.

2. Proper release of bond liability, as evidenced by:

   a. Provision of public notice of all bond release applications and proper notification of all interested parties of the regulatory authority's intent to release bond.

   b. Evaluation of the degree and success of reclamation on all parcels for which partial or complete bond release has been requested (as documented in State inspection reports).

   c. Calculations demonstrating that bond remaining after a proposed partial release will be adequate to complete all remaining reclamation commitments in accordance with program requirements.

   d. Documentation that all applicable bond release standards have been attained before approval of any bond release application is granted.

3. Adjustment of bond amounts as necessary to maintain bond adequacy as the area requiring bond coverage increases or decreases or the cost of future reclamation changes, as evidenced by, at a minimum, evaluation of bond adequacy during the processing of applications for significant permit revisions, transfers and renewals and during midterm permit reviews.

4. Timely forfeiture and use of bonds to complete reclamation when efforts to compel the permittee to do so fail, as evidenced by:

   a. Adherence to program procedural requirements.

   b. Timely collection of forfeited bonds and good faith efforts to pursue and complete any attendant litigation.

   c. Prompt initiation and completion of reclamation on forfeited sites in accordance with the approved reclamation plan.

   d. Recovery from the permittee of reclamation costs in excess of the amount of bond forfeited.

C. Inspections.

Section 517(c) of SMCRA requires that the regulatory authority conduct inspections on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for each surface coal mining and reclamation operation. These inspection frequencies are designed to ensure that surface coal mining operations are conducted so as to protect the environment and ensure that reclamation is conducted contemporaneously with mining. Prompt detection and correction of any violations should minimize their seriousness and duration and hence their environmental impact. This section of SMCRA also requires that OSMRE conduct such inspections as are necessary to evaluate the administration of approved State programs.

Evaluation and oversight of inspection efforts shall be based on State program requirements and the following criteria:

1. Denotation and documentation of mine status (active, inactive, abandoned).

2. Inspection of all surface coal mining and reclamation operations at the applicable minimum frequency in accordance with program requirements, and, for coal exploration sites and coal extraction operations claiming exemptions, at a frequency adequate to encourage and maintain compliance with program requirements.

3. For each inspection, prompt preparation of accurate, thorough reports, as evidenced by:

    a. Documentation of overall site conditions; the seriousness and context of any violations observed; enforcement actions taken or modified, vacated or terminated; and progress in abating violations contained in previously issued notices or orders.

    b. For complete inspections, documentation that all records were reviewed and all performance standards and permit requirements evaluated for the entire permit area.

    c. For partial inspections, documentation of which performance standards and permit requirements were evaluated and for what portion of the permit area or period of operation.

    d. Narratives that exhibit continuity with and cognizance of conditions discussed in previous inspection reports.

4. Maintenance of an inspection database.

5. Timeliness of inspections conducted in response to citizen complaints and ten-day notices.

6. Timeliness and adequacy of State responses to citizen complaints.

D. Enforcement.

Section 521 of SMCRA contains provisions for the issuance, modification, termination and enforcement of notices of violation, cessation orders, show cause orders and alternative enforcement actions. State regulatory programs must include sanctions no less stringent than those of SMCRA and procedures which are the same as or similar to those of SMCRA and its implementing regulations. Effective implementation of these provisions is necessary to ensure that operations are conducted in a manner protective of the environment and that, whenever necessary, regulatory authorities exercise the full reach of State powers to ensure the protection of the public interest through effective control of surface coal mining operations.

Evaluation and oversight of the enforcement of the regulatory program shall be based on State program requirements and the following criteria:

1. Prompt identification of violations, with minimal delays between observation and issuance of the proper notice or order.

2. Issuance, modification and termination of notices of violation, cessation orders, show cause orders and alternative enforcement actions in accordance with program requirements, as evidenced by:

   a. Issuance of notices and orders that prescribe adequate, appropriate and timely remedial measures and abatement periods.

   b. Documentation of the reasons for all modifications, terminations and vacations of enforcement actions, including extensions of abatement periods.

   c. Timely follow-up inspections on all notices and orders, with timely issuance of terminations or failure-to-abate cessation orders as appropriate.

   d. Timely, systematic reviews for patterns of violation, with show cause orders issued as appropriate.

   e. Conduct of show cause hearings in accordance with program procedural requirements, with appropriate, reasoned decisions concerning permit suspension or revocation.

   f. Where other measures fail to achieve compliance, timely consideration and initiation of appropriate alternative enforcement actions.

E. Civil Penalties.

Section 518 of SMCRA sets forth requirements concerning the assessment of civil penalties for violations of the Act or other program or permit provisions. Paragraph (i) of this section requires that the penalty provisions of State programs incorporate penalties no less stringent than those set forth in SMCRA and contain the same or similar procedural requirements relating thereto. Penalty amounts and collection efforts shall be adequate to maintain penalty enforcement values and encourage operators to maintain their operations in compliance on a continuous basis.

Evaluation and oversight of State actions concerning civil penalties shall be based on State program requirements and the following criteria:

1. Timely review of every violation in each enforcement action for assessment of penalties in accordance with program requirements, as evidenced by:

    a. Preparation of explanatory penalty assessment notices and worksheets for each violation addressing the four required factors (history, seriousness, negligence and good faith) and any additional program penalty determination requirements.

    b. Assessment of mandatory daily penalties for failure-to-abate cessation orders.

    c. Adherence to program timeframes for provision of penalty assessment notices to the permittee, the holding of assessment conferences and issuance of assessment conference reports.

    d. Documentation of the reasons and calculations for any penalty assessments, adjustments and waivers.

2. Maintenance of the enforcement value of civil penalties, as evidenced by:

    a. Withholding approval of new permit applications filed by applicants with unabated violations or overdue civil penalties.

    b. Reasonable efforts to pursue collection of overdue penalties.

F. Administrative and Judicial Review.

Sections 525 and 526 of SMCRA contain provisions for administrative judicial review of actions taken by the regulatory authority. Administrative review is available to a permittee issued a notice or order pursuant to paragraphs (a)(2) and (a)(3) of section 521, to any person having an interest which is or may be adversely affected by such notice or order, and to persons aggrieved by other decisions of the regulatory authority. Regulatory programs also must provide for judicial review of enforcement actions in accordance with Section 526. Administrative and judicial review is necessary to ensure that the rights of all persons are fully protected.

Evaluation and oversight of State administrative and judicial review activities shall be based on State program requirements and the following criteria:

1. Provision of administrative and judicial review in accordance with program procedures, as evidenced by:

    a. Proper notification of permittees and persons with affected interests of their right to apply for review of agency decisions and the procedure to do so.

    b. Refusal to accept administrative appeals concerning civil penalties prior to payment of any proposed penalties into escrow.

    c. Timely scheduling of administrative hearings.

    d. Timely issuance of decisions on administrative appeals.

2. Issuance of administrative hearing decisions which are consistent with program requirements and which fully document the basis for the decision.

3. Appealing or otherwise remedying the effect of administrative and judicial decisions with adverse programmatic implications.

4. Proper implementation of provisions governing recovery of costs.

G. Designation of Lands Unsuitable for Surface Mining.

Section 522 of SMCRA requires the regulatory authority to establish a planning process to enable the State to make objective decisions based upon competent, scientifically sound information as to which lands within a State may be unsuitable for all or certain types of mining operations. Upon petition, such lands may be designated as unsuitable for mining operations. The purpose of this process is to ensure that mining operations are not conducted where reclamation is not feasible or where they would conflict with other important values.

Evaluation and oversight of the State's lands unsuitable designation process shall be based on State program requirements and the following criteria:

1. Processing of petitions to designate areas as unsuitable for mining, or to have an existing designation terminated, in accordance with program timeframes and requirements, as evidenced by:

    a. Timely issuance of completeness determinations and decisions on petitions.

    b. Documentation of the basis for completeness determinations or lack of further consideration by the regulatory authority.

    c. Adherence to public participation provisions concerning the processing of petitions.

    d. Preparation of a detailed statement on the potential coal resources of the area, the demand for such resources, and the impact of any designation on the environment, the economy and supply of coal.

    e. Documentation of the basis for the regulatory authority's decisions on complete petitions.

2. Establishment and maintenance of a resource data base and inventory system adequate to permit evaluation of whether reclamation is feasible in areas covered by petitions.

H. Blaster Certification.

Section 719 of SMCRA requires that each State develop and administer a program for the training, examination and certification of persons who will conduct blasting in surface coal mining operations. These programs are designed to ensure that only persons qualified to conduct blasting operations become certified as blasters. Coupled with the performance standards requiring that only such persons conduct blasting operations at surface coal mines, this program helps to protect society from the adverse effects of the improper use of explosives.

Evaluation and oversight of State blaster certification programs shall be based on State program requirements, with emphasis on the following criteria and characteristics of a successful program:

1. Routine offering of training courses and/or materials to persons seeking certification as blasters.

2. Certification of only qualified persons as blasters, as evidenced by:

   a. Examination of all applicants to test their knowledge and ability concerning the use of explosives.

   b. Review and verification of all applications for certification or recertification to ensure that all experience and other requirements have been met.

3. Suspension or revocation of certification when required.

I. Small Operator Assistance.

Section 507(c) of SMCRA requires that the regulatory authority provide assistance to small operators in determining the probable hydrologic consequences of mining and conducting the geologic testing necessary to prepare a permit application.

Evaluation and oversight of a State's small operator assistance program (SOAP) shall be based on the State's adherence to its program requirements, with emphasis on the following criteria:

1. Adequate review and verification of applications for assistance to ensure that only applicants who are eligible for SOAP receive assistance.

2. Monitoring of contracts to ensure that authorized services are provided and that no unauthorized expenditures occur.

3. Monitoring of approved applications to determine when reimbursement is necessary.

4. Maintenance of an acceptable laboratory qualification program.

J. Program Amendments.

Section 503 of SMCRA authorizes States to assume primary jurisdiction over the regulation of surface coal mining and reclamation operations on non-Federal lands within their borders. To do so, the State must demonstrate its capability to carry out the provisions and meet the purposes of SMCRA. This section and the implementing regulations in Subchapter C of 30 CFR Chapter VII establish specific requirements for State regulatory programs, one of which is that the State program be consistent with SMCRA and the corresponding Federal regulations. Accordingly, when conditions or events indicate that the State program or its manner of implementation no longer meets the requirements of the Act or the Federal regulations, the State, on its own initiative or at the request of OSMRE, must undertake measures to amend the program so that it is consistent with the Federal regulations and SMCRA.

Evaluation and oversight of State program maintenance activities shall be based on the State's adherence to the following criteria:

1. Provision of prompt notification to OSMRE of all significant events and proposed or actual program changes as listed in and required by 30 CFR 732.17(b).

2. Timely responses to all notifications from OSMRE that program amendments appear to be necessary (Part 732 letters), as evidenced by submission of the needed amendments or a letter acknowledging the need for a program amendment and containing a schedule or timetable for State action.

3. Timely submission of materials to address all outstanding required amendments and conditions of program approval.

4. Timely promulgation and implementation of program amendments approved by OSMRE.

K. Program Administration.

Section 503(a)(4) of SMCRA requires that State regulatory programs provide for the effective implementation, maintenance and enforcement of a permit system. Section 503(a)(3) requires sufficient administrative and technical personnel and funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of the Act.

Section 705 authorizes the award of grants to the States for program purposes. All grant-funded State actions must conform to the requirements set forth in Circulars A-87, A-102 and A-128 published by the Office of Management and Budget (OMB) and the Department of the Interior's common grants management rule at 43 CFR Part 12.

Section 517(g) prohibits certain employees of the regulatory authority and other State personnel with a function or duty under SMCRA from having any direct or indirect financial interest in any underground or surface coal mining operation. Employees must annually submit a statement of financial interests.

Evaluation and oversight of the administration and management of the regulatory program shall be based on the following criteria:

1. Administration and management of Federal grants in accordance with Treasury Department, Interior Department and OMB requirements, as evidenced by:

   a. Timely drawdowns from funding sources (usually letters of credit) and prompt disbursement of such drawdowns.

   b. Proper accounting for all program income and expenditures, using current generally accepted accounting practices.

   c. Timely submission of applications for funds to maintain continuous program support. Also, timely submission of financial, progress and closeout reports to avoid adverse funding actions by the grantor.

   d. Maintenance of adequate internal control systems.

   e. Performance of all required audits and implementation of all appropriate recommendations.

   f. Proper procurement, management and disposal of property and services acquired with Federal funds.

2. Establishment and maintenance of data management systems adequate to meet program needs.

3. Where State agencies other than the regulatory authority have a role in the program, effective coordination in a manner which minimizes duplication and omissions.

4. Compliance with all Federal conflict of interest provisions including:

   a. Identification of all non-exempt employees.

   b. Identification of and justification for all exempt positions.

   c. Filing of conflict of interest report forms from all non-exempt employees with the proper official.

   d. Identification and resolution of conflicts in a timely manner, including monitoring of compliance with any divestiture orders.

   e. Forwarding proper certification of the filing and review of employee statements to OSMRE.

L. Overall Reclamation Success.

This element is in part a composite of most other program elements in that it requires an overall evaluation of the program's success in achieving the purposes set forth in section 102 of SMCRA. In evaluating this element, emphasis shall be placed on determining whether surface coal mining operations are:

- Being conducted so as to protect the environment, public health and safety, and property rights;
- Reclaiming lands contemporaneously with mining;
- Not being conducted where reclamation is not feasible;
- Striking a balance between environmental protection, agricultural productivity and the nation's need for coal; and
- Assisting in the reclamation of previously mined areas left without adequate reclamation.

To the maximum extent possible, this evaluation shall be quantitative in nature. Relevant data would include, but not be limited to:

- Acreage disturbed and reclaimed (by phase) relative to the total area permitted;
- Measurements of revegetation success (species composition, cover and productivity);
- Results of bond release inspections;
- Results of U.S. Geological Survey watershed monitoring programs or other long-term evaluations of the effects of mining on surface and groundwater hydrology;
- Conclusions resulting from technical investigations, reviews of technical topics and evaluations of experimental practices;
- Amount and degree of offsite damage resulting from mining, e.g., subsidence, siltation of wetlands, loss or degradation of water supplies or streams;
- Amount and degree of irreparable onsite damage resulting from mining, e.g., loss or contamination of topsoil, groundwater contamination from improper overburden handling or drilling;
- Acreage of previously mined lands remined and the effects of such remining; and
- Effects of innovative mining and reclamation techniques.

Each of these topics can and should be broken down into subcategories.

Field Offices shall discuss evaluation techniques with the State and endeavor to develop a cooperative approach to data collection and reporting. Some of this information can be collected on inspections and reported in narratives. Other data may necessitate a Level II evaluation.

V. AMLR Program Elements and Evaluation Criteria

This section lists the AMLR program elements subject to review when overseeing the State/Tribe's implementation of its approved AMLR plan. It also includes general criteria for use in evaluating each element. Except where supplemented by this section, the specific standards and criteria used to evaluate State/Tribal performance shall be those set forth in the approved State/Tribal AMLR plan.

Both the AMLR and regulatory programs involve grants-in-aid. However, while SMCRA establishes numerous non-grant-related requirements for regulatory programs, it contains very few such requirements for AMLR programs. Hence, there are relatively few program elements and subelements requiring evaluation outside the individual grant application review and management process.

With respect to grants management, this guidance does not duplicate, replace or supersede the grants administration requirements of the Federal Assistance Manual and related documents. Rather, it provides the framework within which those aspects of State/Tribal grants management not specific to individual grants, i.e., all grants management activities and functions except the review and approval of specific grant applications and the review and processing of required individual grant audits and reports, shall be performed. Nothing in this guidance shall be used to justify re-review of issues and program requirements, such as project eligibility, that were, or should have been, addressed during the review of individual grant applications and reports, including closeout reports and audits. Furthermore, to the extent applicable and appropriate, oversight of the listed program elements shall rely on the financial, progress, closeout and other grant reports supplied by the State. As with State-supplied regulatory data, the Field Office shall evaluate data sources, accuracy and compilation methodologies only to the extent necessary for validation purposes, as discussed in Part II of this appendix.

A. Project Planning.

Sections 404 and 409 of SMCRA define the lands and waters eligible for reclamation with monies from the Abandoned Mine Reclamation Fund established under section 401. However, the quantity and severity of problems resulting from inadequate reclamation of lands affected by mining activities prior to SMCRA far exceed the funds available to reclaim such sites. Therefore, section 403 of SMCRA establishes reclamation priorities and section 405 requires that State reclamation plans include specific criteria for ranking and selecting projects to be funded. OSMRE has established a national inventory of abandoned mine lands, which States update on a continuous basis, to monitor reclamation needs and guide the planning process.

Projects should be planned and designed to obtain a justifiable, reasonably cost-effective, long-term solution to the site's problems and to assure proper coordination with other AML reclamation programs (such as the Rural Abandoned Mine Program of the U.S. Soil Conservation Service) and other Federal, State and local agencies. Rights of entry, appraisals and any necessary permits also must be obtained in advance of any need to enter property for design or construction purposes.

Evaluation of project planning activities shall be based upon the State/Tribe's adherence to its approved plan and the following criteria:

1. Maintenance of a complete, current, prioritized inventory of sites eligible for and in need of reclamation.

2. Full consideration of public comments concerning project selection.

3. Completion of interagency and intergovernmental coordination requirements, including any necessary permits, in a timely manner.

4. When developing and evaluating design alternatives, consideration of previous experience (including that of other States and Tribes) with the cost, suitability and long-term success of the various techniques of reclaiming sites with similar problems.

5. Timely acquisition of all rights-of-entry necessary for project design and construction, including proper execution of nonconsensual entry procedures where necessary.

6. Determination of whether any real estate parcels within the project area may be subject to lien and, if so, whether the parcel qualifies for a waiver of lien prior to completion of reclamation.

B. Project Construction.

Construction activities result in achievement of the purpose of SMCRA relating to reclamation of mined areas left without adequate reclamation prior to the enactment of SMCRA. Construction monitoring and postconstruction analysis are critical to ensure that expenditures of funds occur in a manner that will accomplish enduring reclamation.

Also, under section 410 of SMCRA, the Secretary is authorized to expend funds for emergency restoration, reclamation, abatement, control or prevention of the adverse effects of coal mining practices on eligible lands if: (1) an emergency constituting a danger to the public health, safety or general welfare exists and (2) no other person or agency will act expeditiously to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices. OSMRE has encouraged States to assume primary responsibility for this function although emergency declarations remain the responsibility of the OSMRE Field Office Director.

Finally, to ensure that no landowner improperly benefits from reclamation activities, section 408 of SMCRA establishes requirements for the filing of liens under certain circumstances upon completion of construction.

Evaluation and oversight of project construction and postconstruction activities shall be based upon the State/Tribe's adherence to the State/Tribal plan and the following criteria:

1. Effective management of the construction program, including contract monitoring, to ensure adherence to contract terms and the achievement of program objectives and project goals.

2. Ongoing postconstruction monitoring and analysis of reclaimed project sites to determine maintenance needs and the long-term success and effectiveness of various reclamation techniques and design alternatives in accomplishing project goals under the environmental conditions found within the State/Tribe.

3. Where potential liens have not been waived in accordance with provisions of the approved plan, timely preparation of post-reclamation appraisals to determine the increase in real estate value due to the reclamation work, and proper recording, maintenance and satisfaction of any resultant liens.

4. Prompt, well-documented investigations of citizen reports of emergency conditions and expeditious abatement or control of those aspects of the problem creating the danger to the public health, safety or general welfare if it is determined that such conditions exist.

C. Program Administration.

Section 405 of SMCRA authorizes the award of grants to the States and Tribes for AMLR program purposes. All grant-funded State and Tribal actions must conform to the requirements set forth in Circulars A-87, A-102 and A-128 published by the Office of Management and Budget (OMB) and the Department of the Interior's common grants management rule at 43 CFR Part 12.

Section 407 of SMCRA contains provisions authorizing the acquisition of abandoned mine lands for reclamation purposes and governing their management and disposal. Congress also has amended SMCRA to authorize the award of up to three million dollars to States to establish subsidence insurance programs.

Evaluation and oversight of AMLR program management and administration shall be based on the State/Tribe's adherence to the following criteria:

1. Administration and management of Federal grants in accordance with Treasury Department, Interior Department and OMB requirements, as evidenced by:

    a. Timely drawdowns from funding sources (usually letters of credit) and prompt disbursement of such drawdowns.

    b. Proper accounting for all program income and expenditures, using current generally accepted accounting practices.

    c. Timely submission of applications for funds to maintain continuous program support. Also, timely submission of financial, progress and closeout reports to avoid adverse funding actions by the grantor.

    d. Maintenance of adequate internal control systems.

    e. Performance of all required audits and implementation of all appropriate recommendations.

    f. Proper procurement, management and disposal of property and services acquired with Federal funds.

2. Establishment and maintenance of data management systems adequate to meet program needs.

3. Where other State or Tribal agencies have a role in the program, effective coordination in a manner that minimizes duplication and omissions.