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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: 631 Date: AUG 24 1990

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

Approval: | Title: Director

1. PURPOSE. This directive establishes policies, procedures and responsibilities for conducting oversight of State regulatory programs and State and Tribal abandoned mine land reclamation (AMLR) programs. This directive applies to all persons and Office of Surface Mining Reclamation and Enforcement (OSM) organizational units involved in oversight of State regulatory programs and State and Tribal AMLR programs during Evaluation Year (EY) 1991 (July 1, 1990 - June 30, 1991). It does not affect oversight workplans prepared for EY 1991, but shall be used when preparing such workplans for EY 1992.

2. SUMMARY OF CHANGES. Since this directive was last revised on March 12, 1990, changes have been made to:

a. Remove all references to the prototype oversight process. The directive is sufficiently flexible to accommodate continuation of beneficial aspects of this experiment.

b. Reflect agency organizational modifications.

c. Specify that, with respect to the videotapes prepared for the Director's briefing, States and Tribes must be afforded an opportunity to accompany the photographer and view the final product before the briefing. Also, clarify that videotapes are not intended for outside use or distribution and shall not be included in Field Office evaluation file (Part 5.a.(4)(e) of the directive and Part II-G of the appendix).

d. Streamline the appendix, remove ambiguities and correct assorted errors and omissions.

e. Clarify the meaning and practical implications of the 3-year review cycle (Part II-A of the appendix) and modify the introductory language of the annual evaluation report accordingly (Part IV-B, page 43 of the appendix). State documents and actions reviewed by OSM shall not be confined to those occurring during the current evaluation year, but evaluation findings must emphasize the most recent documents and actions and place older ones in context.

f. Allow the annual report to be substituted for the action plan and workplan status reports otherwise required for the fourth quarter of the evaluation year (Part II-E of the appendix).

g. Revise workplan preparation and review timeframes (submission is now required 45 rather than 60 days prior to the start of the evaluation year) and clarify form preparation instructions (Part 6.a. of the directive and Parts II-D and III of the appendix).

h. Add new applicant-violator system oversight requirements concerning ongoing verification of application information (Part IV-A.7. of the appendix).

i. Modify the annual evaluation report tables and instructions therefor to improve clarity and to:

(1) Better meet OSM's general information needs, especially public and internal requests for basic descriptive statistics concerning mining, program activities and reclamation accomplishments.

(2) Provide the data needed to comply with the information collection requirements of the Paperwork Reduction Act (Tables 5, 6 and 10).

(3) Comply with a Congressional committee staff request that the annual report include certain data from previous years (Tables 4, 15 and 16).

(4) Improve data consistency, completeness, suitability for comparative analysis, and accuracy of presentation (Tables 2, 3, 9, 15, 16 and 17).

(5) Reflect the continuing evolution of applicant-violator system requirements, especially with respect to ownership and control information (Table 14).

(6) To the extent possible, conform the benefits listed in Table 18 (AML Reclamation Achievements) to the problem types identified in the National Abandoned Mine Lands Inventory. However, because the inventory is primarily oriented toward health, safety and general welfare problems rather than project achievements of all types, it is not completely compatible with the purpose of the table, which is to report the overall reclamation success of the AMLR program.

(7) Clarify that alleged violations contained in ten-day notices which either are on appeal to the Deputy Director or have not been affirmed upon appeal shall not be included in the data entered in Tables 20-22.

3. 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 AMLR plans approved under section 405 of SMCRA.

4. POLICY/PROCEDURES.

a. Responsibilities.

(1) Assistant Director, Reclamation and Regulatory Policy (ADRR).

(a) Develop, clarify and revise national oversight policies, standards and procedures.

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

(c) Coordinate with other Assistant Directors concerning oversight issues and activities affecting their areas of expertise and responsibilities.

(2) Assistant Director, Field Operations (ADFO).

(a) Ensure 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, provide supplemental guidance to Field Office

Directors to address issues of a local or regional nature arising from implementation of the national guidance. This shall not be construed as authorizing waivers of national requirements.

(3) Assistant Directors, Eastern and Western Support Centers (ADSC).

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

(b) As requested, assist Field Office Directors in preparing and editing the videotape presentation required as part of the briefing for the Director concerning the annual evaluation report.

(4) Field Office Directors (FODs).

(a) Plan and conduct oversight activities and prepare related documents and reports in accordance with the appendix to this directive and other national policies and procedures.

(b) Develop day-to-day operational procedures consistent with national oversight policies.

(c) Request technical and other assistance from the ADSC when necessary to properly conduct oversight activities.

(d) Interact on a routine, periodic basis with special interest groups, such as State and local coal associations and citizen and environmental organizations, to determine their areas of concern.

(e) Prepare and present a briefing for the Director on the annual evaluation report and conditions within the State or Tribe. This briefing shall include a videotape (suggested length: 10-15 minutes) highlighting mining operations and AMLR projects within the State or Tribe and illustrating both accomplishments and problems. Innovative mining and reclamation techniques shall also be shown. The State or Tribe shall be afforded an opportunity to accompany the photographer and view the final product. The videotape is a part of the FOD's briefing for the Director and is not intended for outside use or distribution.

(f) Provide the ADFO with copies of Tables 2, 13-14 and 19-22, completed in accordance with the instructions provided in the appendix, within 30 days of the close of the second and fourth quarters of the evaluation year.

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.

5. REPORTING REQUIREMENTS.

Each FOD shall submit:

a. For each State or Tribe within his or her area of responsibility, an annual oversight workplan, including a cyclical program element review schedule and detailed evaluation plan for selected program elements and subelements, to the ADFO 45 days before the start of each evaluation year.

b. Quarterly workplan progress reports to the ADFO within 30 days of the end of each quarter of the evaluation year.

c. Copies of Tables 2, 13-14 and 19-22, completed in accordance with the instructions provided in the appendix, to the ADRRP within 30 days of the close of the second and fourth quarters of the evaluation year.

d. An annual evaluation report for each State or Tribe within his or her area of responsibility to the ADFO within 30 days of the close of the evaluation year.

6. EFFECT ON OTHER DOCUMENTS.

a. With respect to oversight activities conducted during EY 1991, supersedes Directive REG-8, "Oversight of State Regulatory Programs and State and Tribal Abandoned Mine Land Reclamation Programs," Transmittal Number 554, dated July 6, 1989, and subsequent revisions dated March 12, 1990, and April 16, 1990.

b. Table 2 supersedes the form attached as an appendix to Directive INE-29, "Inspectable Units Inventory," Transmittal Number 365, dated August 25, 1987. Submission of this table in accordance with Section 6.c. of this directive (REG-8) will satisfy the reporting requirements of Section 4 of Directive INE-29.

7. REFERENCES.

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

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

8. EFFECTIVE DATE: Upon issuance.

9. CONTACT: Chief, Division of Regulatory Programs; FTS 268-2651.

10. KEYWORDS: State program, evaluation, annual report, workplan.

11. APPENDIX.

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

Appendix

PROCEDURES and CRITERIA

for the EVALUATION of

STATE REGULATORY PROGRAMS

and STATE AND TRIBAL 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 (OSM) 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 OSM and the States and Tribes in carrying out regulatory and AMLR programs; and
- Establishes the format for OSM's annual report to Congress on the status of program administration by the States and Tribes.

II. Procedures

A. General Approach

Oversight shall be conducted as an ongoing process involving continuous evaluation of State and Tribal performance throughout the year. Such a process involves frequent analysis of random sample inspection findings and program data, grant reports and other documents routinely supplied by the State or Tribe. Emphasis shall be placed on prevention, detection and prompt correction of problems. A high level of both formal and informal communication with the State or Tribe concerning oversight activities and findings shall be maintained throughout the evaluation year.

All program elements and subelements, as listed and discussed in Parts III through V of this document, must be thoroughly reviewed once every three years. Unless otherwise provided by national direction, more frequent reviews of a detail in excess of that required in the previous paragraph may be

scheduled only if needed to verify resolution of past or present problems or to determine the existence, nature or extent of suspected problems identified through the random sample inspection process, public concerns, or analysis of data and documents routinely supplied by the State or Tribe. Use of a 3-year review cycle means that, when an element or subelement is selected for review, the sample evaluated must include pertinent documents and activities from the preceding three years. However, the sample selection process may be skewed toward more recent actions, provided evaluation of earlier actions is not eliminated or reduced to token proportions. Regardless of the means by which the sample is selected, conclusions shall accord greater weight to more recent actions and all reports shall place earlier actions in proper context. If a State objects to the use of older documents, more frequent detailed reviews may need to be scheduled, but, to achieve workload balance and acceptable review efficiency, the documents and actions reviewed cannot be confined to those generated or occurring during the current evaluation year.

B. Data Collection and Analysis

Data and documents routinely supplied to OSM by the State or Tribe 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.

Isolated deficiencies shall not be considered a trend unless they are part of an overall pattern of mistakes and omissions indicative of a lack of adequate internal controls. However, to avert the development of significant problems, the Field Office shall discuss any irregularities or incipient trends with the State or Tribe promptly following their observation.

Establishment of State internal control systems and joint OSM-State databases maintained by the State is strongly encouraged to maximize consistency, minimize duplicative efforts and reduce the need for document reviews, although Field Office verification and validation of State data will still be necessary. All reviews of files, documents or other information located at a State office shall be conducted in a manner that minimizes disruption of State operations.

To the extent practical, the sites selected for random sample inspections shall constitute the sample used by OSM for both data validation and evaluation of all regulatory program elements. That is, for those elements and subelements scheduled for evaluation during the year, all relevant documents (permitting actions, enforcement activity, civil penalties, bond releases, etc.) pertaining to a site since the last evaluation of the element or subelement in question shall be reviewed as part of the random sample inspection and checked with the data for that site entered in the State database. Where this method is not feasible, as would be the case with program elements such as blaster certification, lands unsuitable designations, small operator assistance, program amendments and program administration, or where the random sample inspection population fails to include a sample size adequate to evaluate a particular subelement, such as pattern of violations

reviews or alternative enforcement actions, additional special-purpose inspections and/or file reviews shall be conducted.

C. Problem Resolution

Problems shall be resolved as expeditiously as possible in accordance with the procedures described in Directive REG-23. Implementation problems, action plans and other program matters shall be discussed with the State or Tribe at regularly scheduled meetings of Field Office and State or Tribal personnel. The Field Office Director (FOD) shall provide the State or Tribe with the opportunity to meet at the agency head or other supervisory level at least quarterly. An agenda letter shall be formulated and sent to the State or Tribe and the Assistant Director for Field Operations (ADFO) at least one week in advance of each scheduled quarterly meeting. The letter shall outline the specific topics to be discussed and shall solicit additional topics from the State or Tribe. Minutes of each meeting shall be kept and sent to the State or Tribe in draft form for comment before being finalized and filed.

D. Workplans

As part of the planning phase of oversight, each FOD shall annually develop a workplan for overseeing each State or Tribal program within his or her jurisdiction. This plan shall include a schedule indicating when the standard program elements and subelements listed in Part III of this document will be reviewed during the 3-year cycle. When developing this schedule, the FOD shall accord special attention to all continuing or tentatively resolved problems and issues from the previous evaluation year and any concerns identified by interest groups, citizens or environmental organizations pursuant to the survey and interaction required by Section 5.a.(3)(d) of Directive REG-8.

Any specialized technical review topics, such as prime farmland reclamation, cultural resources protection and management, the effectiveness of hydrologic reclamation plans, actual versus predicted performance of topsoil substitutes, and the permitting/construction/stability of excess spoil disposal structures, shall be added to the schedule as separate program elements if they involve aspects of several different standard elements. Otherwise, they shall be listed as separate subelements.

As part of the workplan, the FOD shall also prepare a detailed evaluation plan for each program element and subelement scheduled to be examined during the first year of the 3-year cycle. This plan must define the scope of the evaluation, describe the evaluation methodology and specify the period for which State or Tribal actions will be reviewed and the estimated population and sample sizes. Evaluation plans for technical review topics shall be developed in consultation with the Assistant Director of the appropriate Support Center (ADSC).

In addition, the FOD must annually prepare a plan detailing how the overall success of the State regulatory and AMLR programs in achieving reclamation of mined lands will be evaluated. With respect to this topic, the Field Office 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 routine State and/or Federal inspections, entered in databases and/or reported in inspection report narratives. Other data needs may necessitate additional in-depth studies and special-purpose Federal inspections (especially of bond release sites). Data already being collected by the State or other Federal agencies for other purposes should also be examined for relevance.

To the extent practical, the workplan shall be prepared in cooperation with the State or Tribe. At a minimum, the State or Tribe shall be allowed a 20-day comment period on the draft plan before it is forwarded to the ADFO.

Proposed workplans shall be prepared in accordance with the format prescribed in Part III of this document. They must be submitted to the ADFO (with a copy of any State or Tribal comments attached) for review 45 days prior to the start of each evaluation year. Within 30 days of receipt of the plan, the ADFO shall either approve it or return it for revision. The FOD shall promptly provide a copy of the approved plan to the State or Tribe.

As additional issues and concerns develop during the year, the workplan shall be modified to address them. Resolution shall not be delayed until the succeeding evaluation year. Modifications may also be necessary because of changes in State or Federal resources or priorities. Copies of any such revisions shall be provided to the ADFO for informational purposes or, in the case of proposed new review topics, approval.

E. Workplan Progress Reports

Within 30 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 ADFO with a report summarizing Field Office progress in achieving workplan goals. These reports shall also summarize all workplan revisions. The annual evaluation report may be substituted for the action plan and workplan status reports otherwise required for the fourth quarter of the evaluation year.

F. Element-Specific Evaluation Reports

Whenever the Field Office completes a discrete review of a program element or subelement or identifies a problem through trend analysis, the FOD shall prepare a detailed evaluation report independent of the annual 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 findings, both positive and negative.
- Facts supporting the findings.
- Actual or potential impact or significance of any deficiencies.
- Specific corrective action required or recommended, if any.
- If appropriate, an offer of technical or administrative assistance.

Records shall be maintained of all OSM personnel involved in the review and all State or Tribal personnel contacted. Where OSM 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.

G. Evaluation Files and Documentation

The Field Office shall maintain a public review file for each evaluation year on an ongoing basis in accordance with Directive INF-1. This file shall be maintained independent of the administrative record. It shall be organized by program element, kept current throughout the evaluation period, and include the following items:

- National oversight guidance and format documents.
- Annual workplans and any subsequent revisions.
- Factual information obtained or utilized during oversight activities (excluding inspection reports and other site- or case-specific documents).
- Special reports documenting reviews of program elements and subelements.
- Action plans.
- Meeting minutes and substantive correspondence.
- Annual evaluation report (both the version initially provided to the State or Tribe and the final version).
- Public comments, complaints or observations pertaining to evaluation reports or the evaluation process.

Working papers shall not be included, but special reports, data summaries and detailed analyses adequate to document and support the findings stated in the annual report shall be incorporated. The file shall not include the videotape prepared for the Director's briefing.

III. Workplan Formats

Note: The ADFO may alter the format of these forms to request additional information and meet other needs, provided no informational requirements or categories are deleted.

A. Cyclical Review Schedule

- The FOD shall complete this form, entering an "X" to denote the year(s) each program subelement will be evaluated in detail.
- If a specific element or subelement is not applicable within a particular State, provide a footnote explaining why this is the case.
- Indicate the basis for the review frequency by entering the appropriate code. If the "Other" code is selected, include a footnote providing the specific basis.
- In cases where the FOD believes the standard continuous oversight requirements of the first paragraph of Part II-A of this document are equivalent to the detailed cyclical review requirements of Part II-D, he/she shall attach an explanatory paragraph to this review schedule identifying which of the subelements coded as requiring annual review fall into this category and why.
- Add specialized technical review topics as separate subelements or elements when such topics are not merely a subset of a larger, overall review of existing subelements, but include a parenthetical note after each one stating "technical topic—cyclical review not required".
- Regulatory program elements and subelements requiring annual review include the following:

  A.1.j. AVS checks and permit blocking

  B.6.c. Evaluation of reclamation success at bond release

  C.1. Inspection frequency

  C.3. Maintenance of inspectable units list and inspection database

  D.1. Identification and citation of violations

  J. Program amendments.
- No abandoned mine land reclamation program elements or subelements require annual review.

B. Detailed Evaluation Plan

The FOD shall complete one of these forms for each program element and subelement to be evaluated during the first year of the cyclical review schedule. Where appropriate, closely related subelements may be combined on a single form provided all are identified in the heading. In addition, a form shall be prepared explaining how overall reclamation success will be evaluated.

[State]

CYCLICAL REVIEW SCHEDULE (REGULATORY PROGRAM)

Element/Subelement	Evaluation year			Basis for frequency *
	1992	1993	1994	
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			Basis for frequency *
	1992	1993	1994	
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			Basis for frequency *
	1992	1993	1994	
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 and documentation that bond release standards have been met				
7. Forfeiture				
a. Procedures				
b. Collection and litigation				
c. Site reclamation				

Element/Subelement	Evaluation year			Basis for frequency *
	1992	1993	1994	
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			Basis for frequency *
	1992	1993	1994	
3. Pattern of violations reviews/ show cause orders/hearings				
4. Timeliness and effectiveness of alternative enforcement actions				
5. 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			Basis for frequency *
	1992	1993	1994	
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 program amendments				

Element/Subelement	Evaluation year			Basis for frequency *
	1992	1993	1994	
K. 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. Identification and resolution of conflicts of interest				

*Frequency codes:

1 - Required annual review
2 - Routine cyclical review
3 - Continuing action plan item or other problem
4 - Action plan follow-up (verification of tentative resolutions)
5 - Inspection findings/trend analysis
6 - Public concern
7 - Other

[State/Tribe]

CYCLICAL REVIEW SCHEDULE (AMLR PROGRAM)

Element/Subelement	Evaluation year			Basis for frequency *
	1992	1993	1994	
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			Basis for frequency *
	1992	1993	1994	
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				

*Frequency codes:

1 - Required annual review
2 - Routine cyclical review
3 - Continuing action plan item or other problem
4 - Action plan follow-up (verification of tentative resolutions)
5 - Inspection findings/trend analysis
6 - Public concern
7 - Other

[State/Tribe]

DETAILED EVALUATION PLAN

Element:

Subelement:

Population size:

Sample size:

Basis for review: [Check all that apply.]

___ Required annual review
___ Routine cyclical review
___ Inspection findings
___ Public concern
___ Action plan item or other unresolved problem
___ Action plan followup (to verify implementation of tentative resolutions)
___ Item of national interest
___ Other [specify]

Review scope and methodology:

Projected completion date:

Assistance requested from ADSC:

IV. Regulatory Program Elements and Evaluation Guidance

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 OSM 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. However, OSM reviewers may recommend changes in techniques if the review indicates that their application could result in potential problems. Changes shall be recommended if actual problems are identified.

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 and other information concerning the site in sufficient detail to assess the 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 and other interested agencies in accordance with program requirements.

d. Documented consideration of all public and agency 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.

7. Subject to the provisions of the OSM-State AVS Memorandum of Understanding, conducting a review of each mine site (which may coincide with a State inspection) within two months after initial site disturbance and annually thereafter to determine whether the information contained in the application, especially that concerning the identity of the operator, remains complete and accurate, and initiating corrective action when problems are identified.

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. Actions, prior to issuance of a mining permit, to:

      - Compute and require posting of bond amounts adequate for the regulatory authority to complete the reclamation plan if the operator fails to do so.

      - Evaluate the validity, value and restrictions placed on all instruments posted as bond.

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

   c. Routine 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 OSM 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 technologically or economically 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 allow evaluation of whether reclamation is technologically and economically feasible in areas covered by petitions and whether mining operations would be incompatible with State or local land use plans or would adversely affect fragile, historic, natural hazard or renewable resource lands.

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 OSM, 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 OSM 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 OSM 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 OSM.

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 OSM.

V. AMLR Program Elements and Evaluation Criteria

This section lists the AMLR program elements subject to review when overseeing the State's or 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 or Tribal performance shall be those set forth in the approved State or 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 and 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 or Tribe. 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. OSM 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's or 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 for reclamation projects, consideration of previous experience (including that of other States and Tribes) with respect to 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. OSM has encouraged States to assume primary responsibility for this function although emergency declarations remain the responsibility of the OSM FOD.

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's or Tribe's adherence to the State or 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 or 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's or 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.

4. When land is acquired under section 407 of SMCRA, adherence to the management and disposal requirements of the approved plan and that section.

5. Administration of any subsidence insurance program in a manner that ensures that the program is self-sustaining and that only claims for subsidence damage resulting from eligible coal-related underground mining activities are paid.

VI. Annual Reports

A. Reporting Requirements

- The FOD shall prepare an annual evaluation report for each State or Tribe within his or her area of responsibility.

- The completed report shall be forwarded to the ADFO within 30 days of the close of the evaluation year.

- The ADFO shall provide comments to the Field Office within 15 days of receipt.

- Within 10 days of receipt of the ADFO's comments, the FOD shall revise the report and forward one copy to the State or Tribe, which shall be provided a 15-day comment period.

- Within 10 days of receipt of the State or Tribe's comments, the FOD shall make any necessary revisions and forward the report to the ADFO. The State or Tribe's comments and a summary of the FOD's disposition of those comments shall be appended to the report.

- If the FOD or the ADFO substantively revises the report, the State or Tribe shall be allowed 15 days to provide additional comments. Any comments submitted shall be appended to the report in place of the comments provided earlier, unless the new comments incorporate the previous ones by reference.

- Upon completion of the ADFO review, the FOD shall schedule a briefing for the Director and Deputy Director concerning the report.

- If the Director's review and briefing results in substantive changes, the State or Tribe shall be afforded another 15-day opportunity for comment. Any comments provided shall be appended to the report in place of comments provided earlier, unless the new comments incorporate the previous ones by reference.

- Once the ADFO determines that all necessary changes resulting from the Director's review have been made and any additional State or Tribal comments received, the FOD shall arrange to have 25 copies printed, bound and forwarded to the ADFO.

- The report shall not be printed or released to the public until all changes needed pursuant to the Director's briefing have been made and accepted by the Director.

B. Format and Instructions

- Reports shall be prepared in accordance with the format and instructions provided on the following pages except that, for Tribal reclamation programs, modifications shall be made as necessary to delete all references to regulatory programs.

- With the ADFO's permission, graphics may be added to supplement the findings and tables and facilitate reader comprehension.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State/Tribe

of

[Capitalize name of State/Tribe]

for

Evaluation Year 19__

(July 1, 19__ through June 30, 19__)

[Month/Year]

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