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	U. S. DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** AML-20 **Transmittal Number:** 653 **Date** JAN 4 1991

Subject: Evaluation and Processing of State/Tribe Abandoned Mine Land Reclamation (AMLR) Plans and Amendments

Approval: **Title:** Director

1. Purpose. This Directive provides guidance and establishes procedures for all Office of Surface Mining Reclamation and Enforcement (OSM) employees to use in the evaluation and processing of State/Tribe abandoned mine land reclamation (AMLR) plans and amendments.

2. Summary. This Directive outlines general policy and vests primary responsibility for the processing of State/Tribe AMLR plans and amendments with the Field Office Director (FOD) and Assistant Directors, Eastern/Western Support Centers (AD E/WSC). Signature authority resides with the Director for all proposed and final rules concerning State/Tribe AML plans and amendments which involve a condition of AMLR plan approval or which delegate the Emergency Program to a State. In regard to the above proposed rules and final rules which involve a condition of plan approval or which delegate the Emergency Program to a State, the Director has delegated his signature authority to the Deputy Director, Operations and Technical Services (DD/OTS). AD E/WSC has authority to sign all other proposed and final rules concerning State/Tribe AMLR amendments, including those amendments which change the objectives, scope, or major policies utilized in the reclamation program. The Directive also establishes timeframes in terms of calender days as guidelines within which agency actions should be completed, and emphasizes close working formal and informal relationships with the States/Tribes in the preparation and processing of proposed plans and amendments.

3. Definitions.

a. Amendment. Any alteration of an approved State/Tribe AMLR plan other than nonsubstantive changes or minor revisions having no effect upon the implementation of the plan.

b. Final Rule. A Federal Register notice announcing OSM's decision on a proposed State/Tribe AMLR plan or amendment.

c. Proposed Rule. A Federal Register notice announcing the receipt of a proposed State/Tribe AMLR plan or amendment for agency review, subsequent modifications or explanations thereof, or the opening or reopening of the comment period to allow the public to review materials submitted by the State/Tribe in connection with such proposals.

d. State/Tribe Reclamation Program. Program established by a State/Tribe in accordance with 30 CFR Subchapter R for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual application for grants.

4. Policy/Procedures.

a. General Policy. Congress stated in section 101(f) of SMCRA that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations should rest with the States/Tribes. OSM's policy is to encourage the formulation of State/Tribe reclamation programs and plans to meet those conditions and to approve appropriate amendments to maximize effective reclamation activities. It is also the policy of OSM to encourage and foster informal communication with States/Tribes prior to submittal of State/Tribe AMLR plans and amendments. These interactions, oral or written, are intended to lead to a positive resolution of issues so that formal submissions may be processed in an expeditious manner.

b. Responsibilities.

(1) Field Office Director (FOD).

(a) Coordinate initial review procedures for proposed State/Tribe AMLR plans and amendments in the following manner:

1. Solicit comments from the Assistant Director, Reclamation and Regulatory Policy (AD/RR), the State Historic Preservation Officer (SHPO) and appropriate Federal agencies.

2. Request and obtain Environmental Protection Agency (EPA) concurrence if the plan or amendment concerns air or water quality standards or their applicability.

3. Prepare and surname draft notices for all proposed rule and proposed final rule Federal Register notices.

4. Schedule a public hearing on the proposed plan or amendment and hold the hearing or meeting if one is requested.

5. Evaluate the proposed plan or amendment jointly with the AD E/WSC to determine whether it is consistent with Federal requirements.

(b) In accordance with OSM Directive INF-2, establish and maintain the administrative record file for each proposed plan or amendment and provide appropriately numbered

copies of all documents to the AD E/WSC and the State/Tribe office maintaining the State/Tribe copy of the administrative record.

(c) Meet and otherwise communicate with the State/Tribe and other parties to discuss programmatic issues and amendments. In order to expedite the processing of formal submittals, encourage the States/Tribes to informally submit potential amendments for preliminary review and comment prior to formal submission.

(d) Notify the State/Tribe of Federal Register notice publication dates and provide the State/Tribe with a copy of all proposed and final rules and other Federal Register notices concerning plans and amendments.

(e) Identify issues which require State/Tribe program amendments for resolution and draft any notifications.

(f) Track all proposed plans and amendments and documentation related thereto and provide the State/Tribe with reminder notices of due dates.

(g) Obtain a copy of the plan or amendment as promulgated by the State/Tribe following approval by OSM, compare with the version approved by OSM, and provide the AD E/WSC with a copy of both the promulgated plan or amendment and the findings of this comparison.

(h) Make every effort to receive copies of or obtain access to and review all pertinent official State/Tribe registers or other periodicals containing new and revised laws, regulations or other program components in both proposed and final form.

(i) Make every effort to receive copies of or obtain access to and review all pertinent transcripts or minutes of meetings of the State/Tribe rulemaking body.

(j) Assist the AD/RR in the review of State/Tribe submissions as required.

(k) Evaluate informal submittals of potential State/Tribe plans and amendments jointly with the AD E/WSC.

(2) Assistant Director, Eastern/Western Support Centers (AD E/WSC).

(a) Evaluate all proposed State/Tribe plans and amendments for consistency with Federal requirements, ensuring that all necessary analytical and technical resources are provided to complete this review in a timely fashion. Make sure that all issues resulting from the review are promptly

identified, evaluated as necessary, and resolved so that the submittal may be processed within established time-frames.

(b) Coordinate any necessary legal reviews of amendment related issues with the Field Solicitor. Promptly notify the AD/RR of unresolved issues resulting from the Field Solicitor's review.

(c) In concert with the FOD, coordinate consultation on all submittals with the SHPO or the Advisory Council on Historic Preservation (the Council) when so requested by the SHPO or the Council.

(d) Review all draft proposed rules for accuracy and completeness and for consistency with respect to format and policy concerns.

(e) Prepare and sign proposed and final rules concerning State/Tribe plan amendments, including those amendments which change the objectives, scope, or major policies utilized in the reclamation program.

(f) In regard to AMLR program plan approval, and amendments which involve a condition of plan approval or which delegate the Emergency Program to a State, the AD E/WSC shall prepare a final rule and submit it to the AD/RR. The AD E/WSC shall prepare a memorandum recommending that the Director sign the final rule.

(g) Participate in meetings and otherwise communicate with the State/Tribe as requested by the FOD or as deemed appropriate. All such meetings and other communications are to be coordinated with the FOD.

(h) Monitor the status of all submittals and ensure that the tracking and reporting systems are maintained in an accurate and current fashion.

(3) Assistant Director, Reclamation and Regulatory Policy (AD/RR).

(a) Develop agency policy in response to questions raised by proposed plans or amendments.

(b) Coordinate the review and processing of State/Tribe proposed plans and those amendments that involve a condition of plan approval or which delegate the Emergency Program to a State, including all Federal Register notices associated with such submissions.

(c) Review all proposed State/Tribe amendments for consistency with Federal requirements. Provide comments or other response to the AD E/WSC by the close of the public comment period.

(d) Provide assistance and coordination to the AD E/WSC in resolving issues resulting from legal reviews of program amendments by the Field Solicitor.

(4) Division of Technical Service (DTS), Headquarters.

(a) Coordinate and track the flow of documents.

(b) Provide the Public Affairs Officer with a copy of all draft Federal Register notices for preparation of a news release or news release waiver prior to forwarding the notice package to the Office of the Federal Register. A news release should be prepared for actions involving plan approval, removal of a condition of plan approval or which delegate the Emergency Program to a State.

(c) Communicate any concerns expressed by the Office of the Federal Register with respect to draft Federal Register notices to the signing official, and coordinate resolution of these concerns.

(5) Director. Sign proposed and final rules concerning proposed State/Tribe AMLR plans. In regard to those amendments which involve a condition of plan approval or which delegate the Emergency Program to a State, the Director has delegated his signature authority to DD/OTS.

(6) Public Affairs Officer. Prepare news releases and news release waivers concerning State/Tribe AMLR plans and amendments as appropriate.

(7) Congressional Liaison Officer. Notify the Director and DD/OTS of proposed and/or final Congressional actions affecting State/Tribe AMLR programs. At the discretion of the Congressional Liaison Officer, provide appropriate Congressional delegations with copies of proposed rule and/or final rule notices.

c. Procedures.

(1) Processing of proposed State/Tribe AMLR plans and those amendments which involve a condition of plan approval or which delegate the Emergency Program to a State.

(a) Within five days after receipt of a proposed State/Tribe plan, the FOD shall forward two copies respectively of the submission to the AD E/WSC, requesting a technical evaluation, and AD/RR.

The FOD simultaneously shall establish, and subsequently maintain, the administrative record file in accordance with OSM Directive INF-2, and request that the Public Affairs Officer prepare a news release announcing the submission.

(b) Within five days after receipt from the FOD, the AD E/WSC shall forward one copy to the Field Solicitor with a request for comments.

(c) Within 10 days after initial receipt of a proposed State/Tribe plan, the FOD shall prepare and forward to the AD E/WSC the Federal Register notice announcing receipt of the submission, inviting public comment on its adequacy, and identifying the time and place of the public hearing. The notice shall be drafted in accordance with the format requirements of the "Federal Register Document Drafting Handbook." The hearing may be held no sooner than five days before the close of the public comment period announced in the Federal Register, but no later than the close of the comment period. A public hearing shall be held if two or more persons request the opportunity to testify. If only one person submits such a request, a public meeting shall be held instead. No hearing or meeting need be held where no one requests an opportunity to testify. Verbatim transcripts of hearings and minutes or other summaries of meetings shall be kept and entered in the administrative record. If the SHPO or the Council requests consultation on any amendment provisions that may affect historic interests, the FOD shall immediately notify the AD E/WSC. In concert, the AD E/WSC and FOD shall than arrange any necessary meeting with the SHPO or the Council.

(d) Upon receipt from the FOD, the AD E/WSC shall immediately review and, as needed, correct the draft proposed rule notice prepared in step (c), prepare a memorandum to the DD/OTS recommending signature (note: Signature authority for proposed rules and final rules which involve a condition of plan approval or which delegate the Emergency Program to a State have been delegated to DD/OTS) and forward the rule package to AD/RR.

(e) Within 15 days after initial receipt of a proposed State/Tribe plan, the FOD shall prepare:

1. Transmittal letters to pertinent Federal and other agencies including requests for EPA concurrence in the approval of any provisions relating to air or water quality

standards or their applicability, and a U.S. Fish and Wildlife Service determination under Section 7 of the Endangered Species Act.

2. Letters, signed by the FOD, to the State Governor/Tribal Chairman and the proposed reclamation authority acknowledging receipt of the submission.

3. A newspaper notice announcing receipt of the submission, the hearing date and the comment period.

(f) Within three days after the close of the comment period, the FOD shall provide the AD E/WSC and the AD/RR with one copy of all comments received, the transcript of the public hearing, and any other documents relevant to the submission. Within three days after close of the comment period, the FOD may review and provide comments to the AD E/WSC regarding the comments received, transcripts, or other documents.

(g) Within 10 days following the close of the public comment period, the AD E/WSC shall analyze all comments received and if no deficiencies are apparent, the AD E/WSC shall prepare and the FOD surname a final rule and memorandum to the Director recommending signature and submit it to the AD/RR. If the analysis discloses any apparent deficiencies, the AD E/WSC, through the FOD, shall orally contact the State/Tribe to determine whether the State/Tribe prefers to address these deficiencies before or after publication of the final rule. The FOD shall document this response in a conversation record and enter it into the administrative record. Based on this response, the AD E/WSC shall then prepare and the FOD surname a final rule and memorandum to the Director recommending signature, or a letter to the State/Tribe outlining the areas in which the plan or amendment appears to be inconsistent with Federal requirements and the nature of these deficiencies. If the State/Tribe does not indicate a preference or fails to respond immediately, the AD E/WSC shall proceed with preparation of a final rule unless and until such time as the State/Tribe indicates otherwise. If a letter is prepared, it shall provide the State/Tribe an opportunity to meet with OSM to discuss the issues and it shall also request that the State/Tribe submit any revisions or other materials or rebuttals within 30 days of receipt. The letter shall also suspend the required 90 day period for the Director to act as provided by 30 CFR Part 884 for a specified period not to exceed 30 days in order to allow resolution of the apparent deficiencies. The AD E/WSC shall forward the letter to the FOD for signature and delivery to the State/Tribe. The FOD shall furnish a copy of the signed letter to the AD E/WSC. These actions shall be completed by the AD E/WSC and the FOD within 25 days of the close of the last public comment period.

(h) The AD/RR shall:

1. Prepare all documents needed in the decision process for the Director, including option papers and correspondence. These documents shall be prepared within 15 days after close of the comment period.

2. Through the FOD, obtain State/Tribe concurrence in any conditions of approval.

3. Within 20 days after close of the comment period, forward the final rule to DTS for appropriate surnames and signatures.

4. Notify the Congressional Liaison Officer of the final decision on the proposed plan.

(i) The Congressional Liaison Officer shall notify the appropriate Congressional delegation of the decision prior to its publication in the Federal Register.

(j) The FOD shall notify the State/Tribe of the date of publication in the Federal Register, and provide the State/Tribe with a copy of the notice.

(2) Processing of proposed State/Tribe AMLR plan amendments including those amendments which change the objectives, scope or major policies utilized in the reclamation program. [Proposed amendments to remove a condition of plan approval or delegate the Emergency Program to a State will be processed in accordance with 4.c.(1).]

(a) Within five days after receipt of a formal submittal, the FOD shall:

1. Establish and subsequently maintain the administrative record file in accordance with OSM Directive INF-2.

2. Distribute one copy of the amendment to pertinent Federal and other agencies and solicit their comments. The time allowed for comment shall be no shorter than that provided for public comment.

3. Where the amendment concerns air or water quality standards or their applicability, request the concurrence of the EPA.

4. Forward one copy of the proposed amendment each to the AD E/WSC and AD/RR.

5. In coordination with the AD E/WSC, initiate a review of the amendment to determine its substantive adequacy, providing any comments to the AD E/WSC by the close of the public comment period.

(b) Within 10 days after initial receipt of a proposed plan amendment, the FOD shall prepare and forward to the AD E/WSC a draft proposed rule announcing receipt of the proposed amendment, following the format guidelines of the "Federal Register Document Drafting Handbook."

(c) Immediately following receipt of a copy of the submittal from the FOD, the AD E/WSC shall initiate a review of the proposed amendment in coordination with the FOD review. If the AD E/WSC determines that the submittal involves matters requiring legal expertise, a concurrent legal review of these specific issues shall be requested from the Field Solicitor.

(d) Within five days after receipt from the FOD, the AD E/WSC shall review and, as needed, correct the draft proposed rule prepared in Step (b), sign and forward it to DTS for publication in the Federal Register.

(e) DTS shall provide a copy of the draft proposed rule to the Public Affairs Officer for preparation of a news release or news release waiver, upon receipt of which DTS shall forward the notice to the Office of the Federal Register.

(f) Upon publication of the proposed rule in the Federal Register, the FOD shall send one copy of the notice to the State/Tribe.

(g) No sooner than five days before the close of the public comment period announced in the Federal Register, but no later than the close of the comment period, the FOD shall hold a public hearing if two or more persons request an opportunity to testify. If only one person submits such a request, a public meeting shall be held instead. No hearing or meeting need be held where no one requests an opportunity to testify. Verbatim transcripts of hearings and minutes or other summaries of meetings shall be kept and entered in the administrative record.

(h) If the SHPO or the Council requests consultation on any amendment provisions that may affect historic interests, the FOD shall immediately notify the AD E/WSC even if Step (j) has already been completed. The AD E/WSC, in concert with the FOD, shall then arrange any necessary meeting with the SHPO or the Council.

(i) The AD/RR shall review the amendment and provide comments or other appropriate response to the AD E/WSC by the close of the public comment period. The AD E/WSC shall not delay action pending receipt of comments from the AD/RR.

(j) Within 10 days following the close of the public comment period, the AD E/WSC shall analyze all comments received, including those from the FOD and the AD/RR. If this analysis or the evaluation initiated in Step (c) discloses any

apparent deficiencies, the AD E/WSC, through the FOD, shall orally contact the State/Tribe to determine whether the State/Tribe prefers to address these deficiencies before or after publication of the final rule. The FOD shall document this response in a conversation record and enter it into the administrative record. Based on this response, the AD E/WSC shall then prepare and the FOD surname a final rule or a letter to the State/Tribe outlining the areas in which the amendment appears to be inconsistent with Federal requirements and the nature of these deficiencies. If the State/Tribe does not indicate a preference or fails to respond immediately, the AD E/WSC shall proceed with preparation of a final rule unless and until such time as the State/Tribe indicates otherwise. If a letter is prepared, it shall provide the State/Tribe an opportunity to meet with OSM to discuss the issues and it shall also request that the State/Tribe submit any revised rules or other materials or rebuttals within 30 days of receipt. Finally, the letter shall also note that if the State/Tribe responds in a positive manner, the required 90 day period for the Director to act as provided by 30 CFR Part 884 will be suspended for a specified period not to exceed 30 days in order to allow resolution of the apparent deficiencies.

(k) If a final rule is prepared in Step (j), the FOD shall surname and the AD E/WSC shall coordinate legal review of the rule with the Field Solicitor. Within 25 days after close of the comment period, the AD E/WSC shall sign the rule.

If a letter is prepared in Step (j), the AD E/WSC shall forward it to the FOD for signature and delivery to the State/Tribe. The FOD shall furnish a copy of the signed letter to the AD E/WSC. The AD E/WSC and the FOD shall complete these actions within 25 days of the close of the last public comment period.

(l) If the proposed amendment concerns a condition of program approval or delegates the Emergency Program to a State, DTS shall immediately upon receipt forward the final rule and accompanying documents to AD/RR for review. After review, AD/RR will forward to the Director for signature.

(m) DTS shall provide the Public Affairs Officer with a copy of the draft final rule for immediate preparation of a news release or news release waiver, upon receipt of which DTS shall forward the notice to the Office of the Federal Register.

(n) Immediately upon publication of the final rule, the FOD shall forward one copy to the State/Tribe.

(o) After publication of the final rule in the Federal Register, the FOD shall acquire a copy of the amendment as finally promulgated by the State/Tribe and review it to confirm that, apart from the correction of typographical and

similar errors, the regulations or other amendment provisions have been promulgated in a form identical to that in which they were approved.

If the promulgated regulations are identical to the approved regulations or differ from them only in the correction of typographical errors, the FOD shall forward one copy of the regulations and the review findings to the AD E/WSC.

If the promulgated regulations contain substantive differences from the approved version, the FOD shall process the modifications as a new proposed amendment, repeating Steps (a)-(q) of this section as necessary.

(p) The FOD shall track any required amendments imposed by OSM in the final rule and as necessary provide reminder notices of due dates to the State/Tribe.

(q) If the State/Tribe submits additional comments or materials in response to the letter sent to Step (k), the FOD, within five days of receipt, shall distribute them in accordance with the appropriate Steps of Section (a) and prepare and forward to the AD E/WSC a draft proposed rule announcing receipt of the additional materials and reopening the comment period for 15 days. All parties shall then proceed as in Sections (a)(5)-(o) above. Exceptions to this requirement for reopening the comment period shall be made only for State/Tribe responses which contain no new information or which merely identify errors and omissions in OSM's initial analysis.

5. Reporting Requirements. None.

6. Effect on Other Documents. Replaces memorandum dated February 23, 1982, from the Assistant Director for Program Operations and Inspection to the State Directors and Assistant Regional Directors for AML, entitled "State and Indian AML Reclamation Plan Review and Procedures."

7. References.

a. "Federal Register Document Drafting Handbook," published by the Office of the Federal Register.

b. OSM Directive INF-2, "Administrative Records System," Transmittal Number 435, April 15, 1988.

c. 30 CFR Part 884 - State Reclamation Plans

8. Effective Date. Date of Issuance

9. Contact. Chief, Division of Abandoned Mine Land Reclamation, (202) 208-5365.

10. Key Words. Surface Mining, Reclamation, Plans and Amendments.

11. Appendices. None.