

**ENVIRONMENTAL PROTECTION**

(dollars in thousands)

		2004 Actual	2005 Estimate	Uncontroll. & Related Changes (+/-)	Program Changes (+/-)	2006 Budget Request	Change from 2005 (+/-)
Regulation & Technology	\$\$\$	78,484	79,821	439	-694	79,566	-255
	FTE	198	193	0	0	193	0
Abandoned Mine Land	\$\$\$	0	0	0	0	0	0
	FTE	0	0	0	0	0	0
TOTAL	\$\$\$	78,484	79,821	341	1,131	79,566	-255
	FTE	198	193	0	0	193	0

**MISSION GOAL: TO PROTECT PEOPLE AND THE ENVIRONMENT DURING CURRENT MINING OPERATIONS AND TO ENSURE THAT THE LAND IS RESTORED TO BENEFICIAL USE AFTER MINING HAS CEASED.**

The Environmental Protection business line provides resources to administer a regulatory program over coal mine operations in 24 primacy States, in Federal program states, and on Federal and Indian Lands. The program addresses the protection of public health, safety, and general welfare from the adverse affects of current mining, and restoration of land at the conclusion of mining. Current coal mining operations include over 4.4 million acres in 26 States and on the lands of three Indian Tribes. During active mining, the potential risk from safety and environmental hazards exists within the permitted site. However, because of required SMCRA precautions, long-term effects are minimized. If these safeguards are not taken during and after current mining, the nation could face reclamation costs that far exceed the \$8.5 billion cost of addressing existing priority 1, 2, and 3 AML problems.

The business line supports DOI's Resource Use mission goal through the State and Federal regulatory programs under SMCRA to ensure that coal extraction operations are conducted in an environmentally responsible manner, and that the land is adequately reclaimed during and following the mining process. OSM administers Federal programs in Washington and Tennessee. OSM also administers the Indian Lands Program for mining on Navajo, Hopi, Ute, and Crow Tribal lands. States assist OSM through cooperative agreements to regulate mining on Federal lands. OSM supports State regulatory programs with grants and technical assistance.

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The regulatory grants and state evaluation programs were reviewed under the FY 2005 Program Assessment Rating Tool (PART) process. The assessment found:

- The purpose of the regulatory program is clear;
- States and Indian Tribes assess the program annually through meetings and conferences held throughout the year; and
- Measurable outcome-based performance goals are needed.

In response to Recommendations 1 and 2, OSM has held several meetings with State representatives to develop new measures. OSM is the regulatory authority for Indian lands and will work with the Indian Tribes in developing the performance measures. In August 2003, a steering committee comprised of OSM and State staff developed initial draft measures. These measures were presented to States at the November 2003 Interstate Mining Compact Commission meeting. In May 2004, the Steering Committee held its last meeting to refine draft measures. OSM is considering the Steering Committee's recommended measures in its development of final measures.

OSM's Federal Regulatory and Abandoned Mine Land Program was reviewed under the FY 2006 PART process. The scope of this review included the components of Federal regulation of mining operations in 12 states and on Indian Lands, recommendations on mining plans on Federal Lands; Federal reclamation of abandoned mined lands through high priority and emergency projects; and associated support costs such as technology development and training. Preliminary results indicate that the program is needed and well run. Performance measures for the regulatory program need further development as previously indicated in the FY 2005 PART. OSM continues to work on the development of more meaningful measures in this area.

In FY 2005 and 2006, PART Assessments of the Regulatory grants and Federal Program were conducted. While the assessment found that the programs are well managed, the PART found that measurable outcome based goals are needed. In response to the recommendations OSM:

- ❖ Conducted meetings with States and Indian Tribes to review program performance as a first step in development of program measures.
- ❖ Conducted a meeting with the DOI Office of Inspector General on the overall development of measures, and in particular the OIG recommendation to revise the bond release GPRA measure.

In FY 2005-2006 OSM plans to:

- ❖ Initiate a study to identify data elements, determine availability, and further define current target of 70,000 acres released using trend data and ratios of past mining and reclamation of mined sites.
- ❖ Building on baseline data, develop targets for additional performance measures, such as reporting land reclaimed by land use category.
- ❖ Develop a process and schedule for implementing the changes.

**Operational Processes (Program Activities):** Program activities within this business line ensure the environment is protected during surface coal mining operations and that coal operators adequately reclaim disturbed land after mining is completed.

***ENVIRONMENTAL PROTECTION  
ENCOMPASSES:***

*State and Tribal Funding*

- *State Grants*
- *State Regulatory Activities*
- *Cooperative Agreement Funding*
- *Tribal Regulatory Development Grants*

*Federal Program*

*Federal Lands Program*

*Indian Lands Program*

*State Program Evaluation*

This business line also provides for OSM's costs to ensure that States' programs are current with all Federal regulatory requirements. The State and Tribal funding program activity includes grants to States to regulate coal operations on lands within their borders. For States with cooperative agreements, this activity also includes grants to regulate coal operations on Federal lands.

Finally, this activity includes grants to Tribes to develop regulatory programs and to assist OSM in the regulation of surface coal mining and reclamation operations on Tribal lands. The State Program Evaluation activity funds OSM's oversight of State programs. The Federal Program activity funds OSM activities to ensure SMCRA compliance for non-primacy States (States with a Federally-administered regulatory program). The Federal Lands Program activity funds OSM's activities in preparing Mining Plan Decision Documents for leased Federal coal as well as any regulatory activities on Federal Lands not covered by a cooperative agreement. The Indian Lands Program activity funds OSM's regulatory responsibilities on Indian Lands.

OSM's Environmental Protection mission goal promotes responsible mineral extraction and addresses the protection of public health, safety, and general welfare from the adverse affects of current surface coal mining and reclamation operations since the enactment of SMCRA in 1977. The performance measures for this goal are the protection of the environment and public from off-site impacts resulting from surface coal mining operations and successful reclamation on lands affected by surface coal mining operations. This goal is accomplished through the cooperative efforts of the OSM and State regulatory offices. The following measures are used by OSM as indicators of annual performance.

Off-site impacts, are negative effects resulting from surface coal mining activities such as, blasting or water runoff that affect people, land, water, or structures outside the permitted area of mining operations. The severity of the impacts is rated as minor, moderate, or major. Due to the nature of mining, it is inevitable that some impacts will occur.

Acres released from Phase I, II, or III Bond Release, This performance measure is the number of acres of land that is reclaimed every year by active coal mine operators, and is dependent on the operator to file an application for the release. This is documented and measured through a series of bond releases. The bonds are required to assure that funds are available for reclamation in case the operator fails to reclaim the mined land. Phase III bond release shows the number of acres that have been fully reclaimed from current mining operations, and have met the performance standards.

**Actions Required to Achieve Annual Goals:** OSM continues its outreach to interested parties to address concerns related to mountaintop removal operations, acid mine drainage, and slurry and other impoundments, to evaluate its rules, to advance re-mining efforts, and to ensure that contemporaneous reclamation is occurring. OSM will continue to practice the Secretary's 4C's philosophy through working in partnership with States and Tribes to carry out the mission of the SMCRA. The shift in OSM's role from direct enforcement to oversight has refocused actions on mission accomplishment while fostering better working relationships with States.

**Resources, Skills, and Technology Needed:** Program analysts, reclamation specialists, grant specialists, and various support personnel are needed to implement the State regulatory program and to conduct program evaluations. OSM and the primacy States also will continue to need a diverse and multi-disciplinary cadre of personnel skilled in scientific and engineering areas to review mine permits, determine whether performance bond coverage and amounts are sufficient to ensure reclamation, conduct mine site inspections, and implement enforcement actions when necessary. Computer systems personnel are needed to help maintain various data systems, such as the National Inspection and Enforcement Tracking System that contains data from OSM's oversight and regulatory program inspections.

For FY 2006, the President's Budget requests \$57.2 million to fund 24 State regulatory programs at the maximum 50 percent Federal match level. Additionally, this amount will provide full funding for 14 Federal lands cooperative agreements with States and full funding of four Tribal regulatory program development grants.

The FY 2006 budget request includes \$8.1 million to continue its State program oversight activities and \$5.7 million to fund regulatory programs in non-primacy States like, Tennessee and Washington. Also included in the FY 2006 budget request is \$1.5 million for OSM to regulate Federal Lands, \$2.4 million for regulatory programs on Indian Lands, and \$4.6 million for program development and maintenance to ensure that regulatory standards adequately reflect changes in technologies and program needs.

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The following section details, by program activity, the funding and FTE resources required to meet the annual performance measures. It also includes examples of cooperative work between OSM, States, and Tribes to regulate coal-mining activities.

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**Table 3 – Justification of Program and Performance  
Environmental Protection**

Summary Increases/Decreases for FY 2006  
(Dollars in Thousands)

Program Activity		Regulation & Technology			Abandoned Mine Lands			Total			Inc/Dec (+/-)
		2004 Actual	2005 Estimate	2006 Request	2004 Actual	2005 Estimate	2006 Request	2004 Actual	2005 Estimate	2006 Request	
State and Tribal Funding	\$\$\$	56,863	57,207	57,207	0	0	0	56,863	57,207	57,207	0
	FTE	0	0	0	0	0	0	0	0	0	0
State Program Evaluation	\$\$\$	8,021	8,016	8,151	0	0	0	8,021	8,016	8,151	135
	FTE	80	80	80	0	0	0	80	80	80	0
Federal Programs	\$\$\$	5,262	5,263	5,740	0	0	0	5,262	5,263	5,740	477
	FTE	44	43	43	0	0	0	44	43	43	0
Federal Lands	\$\$\$	1,465	1,467	1,485	0	0	0	1,465	1,467	1,485	18
	FTE	11	11	11	0	0	0	11	11	11	0
Indian Lands	\$\$\$	2,333	2,332	2,366	0	0	0	2,333	2,332	2,366	34
	FTE	20	19	19	0	0	0	20	19	19	0
Program Dev/Maint.	\$\$\$	4,540	5,536	4,617	0	0	0	4,540	5,536	4,617	-919
	FTE	43	40	40	0	0	0	43	40	40	0
TOTAL	\$\$\$	78,484	79,821	79,566	0	0	0	78,484	79,821	79,566	-255
	FTE	198	193	193	0	0	0	198	193	193	0

## **ONGOING PROGRAM**

### **1. State and Tribal Funding**

The \$57.2 million requested for State and Tribal Funding supports the Department's Resource Use goal area by promoting responsible coal extraction using technology to minimize the impact of operations on people, structures, and the environment.

#### *a. State Grants*

The principal means of providing environmental protection within the framework of SMCRA is through "primacy" States that receive Federal grant funding. Primacy States have the most direct and critical responsibilities for conducting regulatory operations to minimize the impact of coal extraction operations on people and the environment. The States have the unique capabilities and knowledge to regulate the lands within their borders. Providing a 50 percent match of Federal funds to primacy States in the form of Administration and Enforcement (A&E) Grants results in the highest benefit and the lowest cost to the Federal government. If a State were to relinquish primacy, OSM would have to hire sufficient numbers and types of Federal employees to implement the program. The cost to the Federal government would be significantly higher.

#### *b. State Regulatory Activities*

Activities of State regulatory authorities include: permit review and issuance, with reliance on the Applicant Violator System (AVS) to ensure that permits will not be issued to operators with outstanding violations; inspection and enforcement; designation of lands unsuitable for mining; and ensuring timely reclamation after mining. In addition, individual States may conduct special activities to address specific needs. These activities may include upgrading permitting programs, computerizing systems to improve review of pending permits, and drafting regulations that respond to changes in Federal rules.

All active and inactive sites, facilities, and areas that support coal mining and reclamation within a State are inspected by the State regulatory authority for compliance with all program requirements. SMCRA requires all active inspectable units under the permanent program to have four complete and eight partial inspections per year. Four complete inspections are required annually for all inactive units.

*c. Cooperative Agreement Funding*

Cooperative agreements with OSM allow States to review and issue permits and conduct the required inspections of regulated facilities on Federal lands. Cooperative agreements provide for uniform enforcement of State program requirements at all facilities within the State and reduce both direct Federal program costs and Federal staff requirements. SMCRA section 705 (c) sets the amount that a State may receive through a cooperative agreement at up to 100 percent of the amount that the Federal government would have to spend to do the same work.

Currently, the following 14 States have entered into cooperative agreements with OSM to administer most surface coal mining requirements on Federal lands: Alabama, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming.

*d. Tribal Regulatory Development Program Grants*

As allowed by the Energy Policy Act of 1992 and Section 710 (i) of SMCRA, OSM provides grants to the Crow, Hopi, Navajo, and Northern Cheyenne Tribes to assist them in developing regulations and programs for regulating surface coal mining and reclamation operations on Indian lands. The grant amounts are based on each Tribe's anticipated workload to develop Tribal regulations and policies, to assist OSM with surface coal mine inspections and enforcement (including permitting activities, mine plan review and bond release) and to sponsor employment training and education concerning mining and mineral resources. These grants fund 100 percent of the Tribal primacy development activities.

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**Table 4 – Fiscal Year 2006 State & Tribal Regulatory Funding Estimates  
(Federal dollars only)**

*These amounts are based on FY 2006 grant requests (18-month estimates) and represent 50% of the costs to regulate surface coal mining on non-federal lands and 100% of the costs on Federal Lands. Actual grant awards will be based on historical expenditures, justifications by the States, and OSM evaluations.*

State/Tribe	Non-Federal Lands	Federal Lands	Total
Alabama	1,120,858	12,944	1,133,802
Alaska	178,130	0	178,130
Arkansas	136,934	0	136,934
Colorado	360,197	1,559,339	1,919,536
Illinois	2,111,392	95,902	2,207,294
Indiana	2,017,475	0	2,017,475
Iowa	125,309	0	125,309
Kansas	125,612	0	125,612
Kentucky	11,529,024	1,048,641	12,577,665
Louisiana	167,830	0	167,830
Maryland	524,209	0	524,209
Mississippi	103,524	0	103,524
Missouri	299,741	0	299,741
Montana	195,227	792,739	987,966
New Mexico	260,928	413,368	674,296
North Dakota	242,172	282,533	524,705
Ohio	2,033,574	0	2,033,574
Oklahoma	543,355	374,713	918,068
Pennsylvania	11,801,900	0	11,801,900
Texas	1,142,988	0	1,142,988
Utah	212,285	1,421,381	1,633,666
Virginia	3,046,510	3,526	3,050,036
West Virginia	10,303,871	0	10,303,871
Wyoming	265,930	1,741,053	2,006,983
Crow	0	56,091	56,091
Hopi	0	155,312	155,312
Navajo	0	400,538	400,538
N. Cheyenne	0	0	0
<b>TOTALS</b>	<b>\$48,848,975</b>	<b>\$8,358,080</b>	<b>\$57,207,055</b>

## **2. State Program Evaluation**

The \$8.1 million requested for State Program Evaluation supports the Department's Resource Use goal area by ensuring the efficient operation of State regulatory programs.

### *a. Oversight Strategy*

OSM's current oversight strategy focuses on whether the public protection requirements and environmental protection standards of SMCRA are being met, with primary focus on end results and the on-the-ground success of States in meeting SMCRA's environmental protection goals. This includes prompt and effective reclamation of coal mine land and public participation in the regulatory program.

OSM conducts oversight under a results-oriented strategy that emphasizes cooperative problem solving with the States, evaluations tailored to State-specific conditions, and the development of performance agreements. This strategy has promoted a more positive attitude and spirit of cooperation that lets OSM work cooperatively with the States to improve State program implementation. To provide clarity in guidance and consistency in oversight and evaluation, OSM continues to review and refine its oversight strategy.

### *b. OSM-State Performance Agreements*

OSM's oversight directive outlines the performance agreement as a framework for OSM and the State to agree on a plan to conduct oversight activities. Joint efforts to prepare workable performance agreements also maintain and improve the relationship between OSM and the State, fostering shared responsibilities and a more open discussion of difficult issues.

Inspections are identified in performance agreements and are planned and conducted to collect data relative to the oversight directive and the annual evaluation report. Many reviews are designed to investigate some previously identified areas of concern. Inspections often are the means to collect the data. Joint inspections with the States provide the opportunity for OSM's Field Offices to work cooperatively with the States and industry to resolve problems.

### *c. Public Participation*

OSM's oversight directive provides great flexibility to conduct oversight activities in a manner consistent with the needs of individual State programs. Central to identifying potential needs and oversight topics are the views of the public. Periodic meetings are held by OSM Field Offices to identify public concerns regarding coal mining regulatory programs.

*d. Oversight Inspections*

SMCRA requires the Secretary to conduct mine inspections to evaluate the administration of State programs. Inspections are conducted on a range of sites - from those actively producing coal to forfeited bond sites awaiting reclamation. OSM's policy gives its regional and field managers discretion and flexibility to be proactive and to prioritize and selectively target their inspections to focus on those topics and activities that present the best opportunity for environmental improvement or the best means of evaluating the impact of program implementation on society and the environment. For example, inspections may focus on high-priority problems such as acid mine drainage, impoundments and other problem areas, as well as current coal mining operations and abandoned mine sites awaiting reclamation. This policy allows for the most effective use of available resources.

Consistent with the intent of SMCRA that States take the lead in regulatory programs, the vast majority of inspections were performed by the States: over 80,000 in 2004. In contrast, OSM conducted 1,669 inspections in primacy States.

The projected FY 2005 oversight inspection workload will be about the same as in FY 2004. The actual number will be adjusted depending on the program areas, the presence or absence of problems, input from the public, and the terms of the performance agreements in each State.

*e. Ten Day Notices*

The primary emphasis of inspections is to identify issues and resolve them before they become problems and to evaluate whether SMCRA's environmental protection and reclamation goals are being achieved. When a Federal inspection reveals violations of State programs (other than imminent danger of significant environmental harm or danger to the public, both of which require immediate issuance of a cessation order), a Ten-Day Notice (TDN) is issued to the State. All such notices require written responses from the State regarding the actions taken to resolve the alleged violations, or a statement of good cause for not taking such action. A Federal review, which may include a field inspection, is conducted following a TDN when the State does not act or show good cause for not doing so. If the review or inspection shows that a violation exists, and the State fails to take appropriate action, a Federal enforcement action may be taken. While OSM does not second-guess States on judgment calls, the agency's ability to take enforcement actions to address isolated State program violations is far less drastic, disruptive, and costly than a Federal takeover.

The inspection component also includes the process for addressing citizen requests for Federal inspection. Citizen requests received by OSM in primacy States are referred directly to the State regulatory authority using the TDN process, unless there is evidence that imminent danger of significant environmental harm or immediate danger to the public exists. In such cases, OSM will immediately conduct a Federal inspection. The

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State official and citizen requestor are notified prior to the inspection and given the opportunity to accompany the inspector when a Federal inspection is conducted.

Table 5 provides FY 2004 data on the number of State inspections and OSM oversight inspections conducted in primacy States. State data is for the time period of July 1, 2003 through June 30, 2004.

<b>Table 5 – FY 2004 Primacy State and OSM Inspections</b>				
	<b>STATE</b>			<b>OSM TOTAL</b>
	<b>PARTIAL</b>	<b>COMPLETE</b>	<b>TOTAL</b>	
Alabama	282	2,480	2,762	84
Alaska	59	30	89	4
Arkansas	103	53	156	7
Colorado	319	195	514	16
Illinois	831	395	1,226	105
Indiana	1,343	673	2,016	75
Iowa	31	19	50	0
Kansas	89	48	137	4
Kentucky	14,680	7,858	22,538	301
Louisiana	16	8	24	2
Maryland	576	350	926	25
Mississippi	9	4	13	3
Missouri	97	20	117	63
Montana	106	94	200	4
New Mexico	125	50	175	4
North Dakota	548	148	696	9
Ohio	2,218	1,385	3,603	105
Oklahoma	394	312	706	34
Pennsylvania	10,996	7,531	18,527	461
Texas	242	120	362	15
Utah	192	115	307	10
Virginia	3,280	2,679	5,959	132
West Virginia	12,462	6,830	19,292	186
Wyoming	251	142	393	20
<b>Total</b>	<b>49,249</b>	<b>31,539</b>	<b>80,788</b>	<b>1,669</b>

### **3. Federal Programs**

The \$5.7 million requested for Federal Programs supports the Department's Resource Use goal area by promoting responsible coal extraction using technology to minimize the impact of operations on people, structures, and the environment.

The permit review process in Federally administered programs consists of review of the permit application package for administrative completeness and technical adequacy, preparation of findings and supporting documentation, and conducting an environmental analysis. Review timeframes vary depending on the complexity of a permit application, the size of the mine, and the response times of applicants submitting additional information required to process the permit application.

Tennessee is the largest Federal program in terms of the number of permits. Other Federal programs with current or projected regulatory activity include Georgia and Washington, with the bulk of that activity in Washington. Programs also are in place for California, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, and South Dakota. The following bullets highlight key characteristics of two of the largest Federal programs, Tennessee and Washington:

- Tennessee: There are 135 active mine sites, 26 inactive sites, and 173 abandoned sites in Tennessee. Coal production has stabilized in recent years and is fluctuating around 3 million tons annually. While OSM has discussed the possible return of primacy to Tennessee with State officials on numerous occasions over the years, there continues to be no interest shown in assuming the program.
- Washington: There are two active surface coal mines regulated under the Washington Federal Program. The Centralia Mine, located about 25 miles southeast of Olympia, Washington produces approximately six million tons of coal annually and will affect some 8,100 acres of land within a 14,450-acre permit area during the 40-year life of the mine. The John Henry No. 1 Mine, covering 480 acres near the City of Black Diamond, only produces a small amount of bituminous coal annually.

In addition, effective August 22, 2003, OSM substituted Federal enforcement for major parts of the Missouri regulatory program because the State legislative did not fully fund the program for state fiscal year 2004. This has continued into FY 2005. The areas where we are the regulatory authority include inspection, enforcement, permitting, bonding, blasting, and designation of areas unsuitable for mining. The Missouri regulatory authority retained its responsibility for bond forfeiture activities, including associated administrative functions. At this time, it is uncertain whether Missouri will reassume authority for those parts of the program for which OSM substituted Federal enforcement.

Table 6 provides inspection and enforcement data for Federal program States during FY 2004.

<b>Table 6 - FY 2004 Federal Program States Inspection / Violation Data</b>					
<b>STATE</b>	<b>INSPECTIONS</b>			<b>NOV'S</b>	<b>FTA CO'S</b>
	<b>COMPLETE</b>	<b>PARTIAL</b>	<b>TOTAL</b>	<b>VIOLATIONS</b>	<b>VIOLATIONS</b>
Georgia	3	1	4	0	0
Tennessee	917	932	1,849	65	0
Washington	9	17	26	4	0
Other *	87	180	267	0	0
<b>TOTALS</b>	<b>1,016</b>	<b>1,130</b>	<b>2,146</b>	<b>69</b>	<b>0</b>

\* Reflects inspections conducted by OSM staff in Missouri.

#### 4. Federal Lands Program

This program activity includes direct OSM regulatory activities on Federal lands in States without cooperative agreements, implementation of cooperative agreements with primacy States to regulate coal mining on Federal lands within their borders, preparation of mining plan decision documents under the Mineral Leasing Act, and processing valid existing rights claims that involve certain Federal Lands. The \$1.5 million requested for this activity supports the Department's Resource Use goal area by promoting responsible coal extraction using technology to minimize the impact of operations on people, structures, and the environment. As part of this program activity, OSM consults and coordinates with State Historic Preservation Offices, the U.S. Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), U.S. Forest Service (USFS), National Park Service (NPS), the Environmental Protection Agency (EPA) and the Army Corp of Engineers (COE). The processing of mining plan decision documents constitutes the largest part of the workload under this program activity.

Table 7 provides projected mining plan decision document workload data.

<b>Table 7- Projected Mining Plan Decision Document Workload on Leased Federal Coal, by Fiscal Year</b>		
<b>Mining Plans and Modifications to Existing Mining Plans</b>		
<b>Activity</b>	<b>FY 2004</b>	<b>FY 2005</b>
In progress prior FY	6	9
Anticipated current FY	5	13
Total FY Workload	11	22
Completed in FY	2	12
Balance, end of FY	9	10

Under this program activity, OSM also provides support to BLM and USFS in leasing activities that involve Federal coal resources. OSM's participation in NEPA compliance analyses prepared at the leasing stage ensures the consideration of OSM permitting or mine plan approval concerns. This cooperative effort saves mining companies valuable time in the leasing and mine plan approval process; it also may result in improved resource recovery. In addition, satisfactory evaluation of the environmental impacts of coal mining in the proposed lease area at the time of leasing can reduce the likelihood of the need for a subsequent Environmental Assessment (EA) or Environmental Impact Statement (EIS) for mining plan approval under SMCRA.

## **5. Indian Lands Program**

OSM is responsible for coal mining and reclamation activities on Indian lands. The Indian lands program includes permit application review, determination of performance bond amounts, inspection and enforcement, bond release, and maintaining a staff to coordinate with the individual Tribes and other Federal agencies, as necessary. The proposed budget provides \$2.4 million to fund the activities to promote responsible mineral extraction on Indian Lands to meet the Nation's energy needs.

The Crow, Hopi, and Ute Mountain Ute Tribes; and the Navajo Nation have coal-mining activities on their lands. The McKinley Mine and Navajo Mine are large surface mines on the Navajo Nation. The Black Mesa/Kayenta mining complex involves Navajo coal beneath Navajo surface, and coal jointly owned by the Navajo Nation and the Hopi Tribe – most of which is beneath Navajo surface and some of which is beneath Hopi surface. One surface mine in Montana mines coal owned by the Crow Tribe and a haul road supporting reclamation operations at a New Mexico mine crosses the Ute Mountain Ute Reservation. The Crow, Northern Cheyenne and Hopi Tribes, and the Navajo Nation are evaluating coal properties for future development. The Indian lands mines are among the largest in the United States, with a total of about 101,000 acres under permit.

OSM coordinates closely with Indian Tribes. The Federal trust responsibility is a legal obligation under which the United States has charged itself with moral obligations of the highest responsibility and trust toward Indian Tribes. OSM ensures that the lands and trust resources of Federally-recognized Tribes and their members are identified, conserved, and protected. In fulfilling these responsibilities, OSM operates within a government-to-government relationship with Indian Tribes. To aid in meeting trust responsibilities, OSM, BIA, BLM and MMS sponsor a continuing Indian Trust Responsibilities and Federal Obligations training program.

<b>Table 8 - FY 2004 Indian Lands Inspection Data</b>				
TRIBE	INSPECTIONS			NOV'S
	COMPLETE	PARTIAL	TOTAL	VIOLATIONS
Crow Tribe	2	8	10	0
Hopi Tribe	8	4	12	0
Navajo Nation	60	50	110	9
Ute Tribe	3	8	11	0
<b>TOTALS</b>	<b>73</b>	<b>70</b>	<b>143</b>	<b>9</b>

<b>Table 9-Projected Permit and Permit Revision Workload where OSM is the Regulatory Authority, by Fiscal Year</b>				
Activity	Federal Programs (Non-Primacy States)		Indian Lands	
	FY 2004	FY 2005	FY 2004	FY 2005
In progress previous FY	109	98	50	57
Anticipated current FY	87	131	88	85
Total FY workload	196	229	138	142
Completed in FY	98	135	81	85
Balance, end of FY	98	94	57	57

## 6. Program Development and Maintenance

Work elements under this program are primarily related to policy actions, such as rulemaking, grants management and special studies that support the other program activities in the environmental protection business line. The budget proposal provides \$4.6 million to support the Department's Resource Use goal.

### *a. Rulemaking*

OSM issues Federal rules and prepares the associated information collection clearance packages. Functions under this program activity include rule development and preparation of environmental assessments, environmental impact statements, records of compliance, and economic analyses for all rules prepared by OSM. OSM also maintains

the administrative record for rules and coordinates rule publication with the Office of the Federal Register.

Rulemaking Associated with State Programs: OSM assists States with development, administration, implementation, and maintenance of their approved regulatory programs. Decisions affecting State programs are Federal rulemaking actions. OSM evaluates State-initiated program changes (statutory, regulatory, or changes in the program’s provisions, scope, or objectives), as well as OSM required modifications that are a result of legal interpretations or changes to SMCRA and Federal Regulations. In its evaluation, OSM solicits public comments through proposed rules published in the Federal Register, holds public meetings, maintains the administrative record, approves or does not approve proposed State program amendments, and publishes the decisions as final rules in the Federal Register. During FY 2004, OSM published 26 proposed rules and 24 final rules for State programs.

States may be required to amend their programs as a result of changes to SMCRA and Federal regulations. Under the authority of section 521(b) of SMCRA, OSM recommends withdrawal, in whole or in part, of an approved State program if it finds - after conducting hearings, establishing remedial actions, monitoring compliance, evaluating performance, and implementing the rulemakings associated with such withdrawal - that a State is failing to enforce its approved program. OSM also responds to requests under section 521 (b) to third-party requests to evaluate a State’s program.

When a State program amendment is required, OSM notifies the State of the required change and reviews the State submission and either approves or does not approve the proposed change. This activity represents a significant workload for OSM staff. During FY 2004, the State Amendment activity was identified as follows:

<b>Table 10– FY 2004 State Program Amendment Activity</b>				
<i>Number of Amendments</i>				
<b>Amendment Type</b>	<b>Pending Oct. 1, 2003</b>	<b>Received FY 2004</b>	<b>Completed FY 2004</b>	<b>Pending Sept. 30, 2004</b>
Informal	2	9	9	2
Formal	26	19	27	18
<b>Total</b>	28	28	36	20

OSM Rulemaking Initiatives: Before developing a formal proposed rule, OSM involves interested parties. Stakeholder participation results in improved regulatory proposals. During FY 2004, OSM published two final permanent program rules in the Federal Register, Enhancing Abandoned Mine Land Reclamation Notices (November 20, 2003), and the Combined Benefit Fund Rule (September 17, 2004).

Key rulemaking initiatives for which OSM anticipates activity in FY 2005 are described below.

- *Financial Assurances – Treatment of Pollutational Discharges:* During FY 2002, OSM published an advance notice of proposed rulemaking in the Federal Register seeking comment on issues related to bonding and financial mechanisms for the long-term treatment of acid mine drainage associated with coal mining. Comments were received from citizens, citizens' groups, states, coal and surety industries, associations, and other Federal agencies. OSM plans to propose rules during FY 2005 to address this important issue.
- *Revisions to the State Program Amendment Process:* Under OSM's existing regulations, the Director is required to begin proceedings under Part 733 to substitute Federal enforcement when a State fails to submit a required program amendment or a description of the amendment and a timetable for enactment or fails to comply with the timetable. This rulemaking would provide OSM with the discretion to consider the overall performance of a State and the impact a delinquent amendment will have on State implementation and enforcement before deciding that Federal enforcement is required when the State fails to amend its program. A proposed rule was published on December 23, 2003. OSM plans to publish a final rule in FY 2005.
- *Ownership and Control Rule:* Based on settlement negotiations with the National Mining Association, OSM was required by the court to issue proposed revisions to the Ownership and Control final rule published in December 2000. The proposed revisions include simplifying the definition of control, reducing unnecessary reporting burdens, making permit application information requirements more concrete and objective, and making certain enforcement actions discretionary rather than mandatory. OSM published the proposed rule on December 29, 2003, and plans to publish the final rule during FY 2005. During FY 2005, OSM will also focus on implementation of the final "Ownership and Control" rule and related regulations by providing assistance to the States, in the form of training, program review, and implementation strategies.
- *Excess Spoil, Stream Buffer Zones and Diversions:* OSM published a proposed rule in January 2004 and expects to finalize it in FY 2005. This rule would address the environmental impacts of mining that involve creation of excess spoil fills, particularly fills placed in streams. The rule would: (1) minimize the adverse environmental effects stemming from the construction of excess spoil fills, (2) clarify the circumstances in which mining activities, such as the construction of excess spoil fills, may be allowed within the stream buffer zone (SBZ), i.e., within 100 feet of a perennial or intermittent stream, and (3) amend our stream diversion regulation to comport with the

proposed changes to the SBZ rule. By these changes, we intend to clarify our program requirements and reduce the regulatory uncertainty concerning these matters. These changes will also reduce conflicts and improve consistency between regulation under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and regulation under the Clean Water Act (CWA).

- *Revegetation:* Based on an outreach initiative conducted in previous years, OSM plans to propose minor revisions to its existing revegetation regulations in FY 2005. The proposed changes would improve the quality of reclamation achieved under SMCRA and achieve a more consistent application of those requirements to both arid and humid areas of the country. The changes are intended to facilitate the establishment and maintenance of diverse plant communities on reclaimed mine lands; to ensure the regulations are not an impediment to reforestation of mine lands and facilitates the evaluation of woody shrub communities in the West; and make the measurement of revegetation success in both the arid and humid areas of the United States more similar. This rulemaking activity will likely be completed in FY 2005.
- *Abandoned Coal Refuse Sites:* The Energy Policy Act of 1992 requires the Secretary to develop new regulatory standards and a new permitting system, if appropriate, to facilitate the removal and on-site reprocessing of abandoned coal refuse piles, provided the Secretary determines through a standard-by-standard basis that a different standard would provide the same level of environmental protection as afforded by sections 515 and 516 of SMCRA. The proposed rule would conform with the standards in sections 515 and 516 of SMCRA. OSM expects to propose the rule in FY 2005 and finalize it in FY 2006.
- *Transfer, Assignment, or Sale of Permit Rights:* Under the terms of a court-approved settlement resulting from litigation, OSM proposed regulatory amendments pertaining to the transfer, assignment, or sale of permit rights in FY 2005. The proposed rule would amend the definitions of “successor in interest” and “transfer, assignment, or sale of transfer, assignment, or sale of permit rights and create new and separate rules for successors in interest. The primary purpose of the proposed rule is to distinguish clearly the circumstances that will constitute a transfer, assignment, or sale of permit rights (requiring a regulatory authority’s approval and, at a minimum, a permit revision) or result in a successor in interest (requiring the issuance of a new permit) from those that will only require a permit to provide information updates. The proposed rule also affords us an opportunity to ensure our rules are consistent with recent legal developments.
- *Coal Production Fees and Fee Allocation:* In FY 2004, OSM proposed a rule that sets forth the criteria and procedures that OSM proposes to use to establish fees under the abandoned mine reclamation program provisions of SMCRA. The fixed-rated fees established under SMCRA expire on June 30,

2005. However, SMCRA requires that, for coal produced after that date, fees be established to continue to provide for transfers from the Abandoned Mine Reclamation Fund to the Combined Benefit Fund. This proposed rule would implement the requirement. The proposed rule would also revise OSM's regulations governing the allocation and disposition of the fees collected and of other AML Fund income. OSM intends to publish a final rule and have it effective by June 30, 2005.

*b. Grants Management*

OSM supports and participates in the Department of the Interior's (DOI) grants simplification efforts based on Public Law 106-107, the Administration's e-Government initiative, and Health and Human Services' e-grants program (Grants.gov). DOI is currently working on a new agency-wide accounting system, Financial and Business Management System (FBMS). OSM will be one of the first bureaus within the Department to implement the system by converting OSM's current financial assistance program during FY 2005. The use of electronic grants will simplify and expedite the application process for the States and Tribes. OSM has a cooperative working relationship with our grantees, working for a streamlined application and awards process, faster obligation of Federal funds, innovative program monitoring, less paperwork, and intensive reporting and close-out of grants.

*c. Special Projects*

OSM special projects include interpretation of SMCRA, reports to Congress, legislative analysis, and assistance in response to litigation. OSM also conducts studies and analyses in response to Departmental initiatives and coordinates with other Bureaus and Federal agencies, including the Fish and Wildlife Service (Endangered Species Act), Advisory Council on Historic Preservation (National Historic Preservation Act), EPA (Clean Water Act), Corps of Engineers (section 404 permits), and Mine Safety and Health Administration, and the Small Business Administration (Small Business Regulatory Enforcement Fairness Act) all of whose activities can affect the surface coal mining regulatory program.

**FY 2004 PROGRAM PERFORMANCE ACCOMPLISHMENTS**

In 2004, the major accomplishments in the Environmental Protection program activity include:

- Issued about 342 new coal mining permits, in cooperation with state authorities, in 16 States.
- Performed approximately 34,297 complete mine inspections and 50,449 partial inspections, in cooperation with state authorities, to insure coal mines are operated safely and in accordance with environmental laws. (Figures include State and Federal inspections, and may include estimates for some States.)

**FY 2005 PLANNED PROGRAM PERFORMANCE**

Achieve the following performance measures:

- Ninety-three percent of active sites are free of off-site impacts.
- Seventy thousand acres where reclamation goals are achieved as evidence by release from Phase III Performance Bonds.
- One hundred thousand acres released from Phase I & II Performance Bonds.

The number of acres that meet the requirements for Phase I or II bond release and the number of acres of mined land that are fully reclaimed and achieve Phase III bond release will determine the overall status of reclamation of mined lands. Data collected will be derived from agency program systems and the performance agreement elements negotiated with the States. Data collection methods are established in accordance with an agency policy directive, which was developed in cooperation with the States.

**JUSTIFICATION OF 2006 PROGRAM CHANGES**

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Environmental Protection	FY 2006 Budget Request	Program Changes (+/-)
\$(000)	79,566	-694
FTE	205	0

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Program Changes:

Federal Programs (+\$405,000) – OSM proposes an increase to support additional work activities under this Program.

Coal Study (-\$986,000) – In FY 2005, Congress provided OSM funding (\$1.0 million, less two rescissions) to contract with the National Research Council of the National Academy of Sciences to carry out a twenty-four month study on coal research, technology and policy matters. The funding was only for FY 2005, and therefore is considered a reduction in FY 2006 from the FY 2005 enacted budget.

Information Technology (-\$104,000) – Represents overall Bureau savings from FY 2005 to FY 2006 in IT investments.

Federal Vehicle Fleet (-\$9,000) - In 2004, the Department began a collaborative initiative to improve fleet management, developed a strategic plan, and began to implement recommendations from a review of the program conducted by the Office of Inspector General. The initiative focuses on economic-based strategies, including implementation of life-cycle replacement schedules, disposal of underutilized vehicles and vehicles that have surpassed their lifecycle, use of fleet performance measures, energy-saving practices and expanded use of alternate-fueled vehicles, and expanded leasing. The Department-wide strategy for improved fleet management includes migrating fleet management programs to a more standardized operational model that promotes energy-saving technologies, the development of fleet composition baselines and multi-year plans, improved performance metrics that address efficiency and effectiveness, vehicle and motor pool sharing, and purchase and lease arrangements that consider seasonal workforces.

On an annual basis, Interior spends over \$160 million to operate and maintain its fleet of approximately 38,000 vehicles. Interior’s improvement plan provides a goal for reduction to fleet expenditures of \$11 million in 2005 and an additional \$3.7 million in 2006. The reduction is OSM’s share of the improvement plan for FY 2006.

**FY 2006 ENVIRONMENTAL PROTECTION PROGRAM PERFORMANCE**

<b>Resource Use End Outcome Goal 2.1: Manage or influence resource use, and ensure optimal value</b>								
<b>Measures:</b>	<b>FY 2003 Actual</b>	<b>FY 2004 Plan</b>	<b>FY 2004 Actual</b>	<b>FY 2005 President's Budget</b>	<b>FY 2005 Revised Plan</b>	<b>FY 2006 Plan</b>	<b>Change in Performance 2005 Plan to 2006</b>	<b>Long-term Target (2008)</b>
Percent of active sites that are free of off-site impacts. <u>1/</u> (SP) (PART)	92.3%	93%	93%*	93%	93%	93%	0	93%
Number of acres where reclamation goals are achieved as evidenced by release from Phase III Performance Bonds. <u>1/</u> <u>2/</u> (SP) (PART)	48,528	70,000	49,054*	70,000	70,000	70,000	0	70,000
Number of acres released from Phase I & II Performance Bonds. <u>1/</u> (BUR)	106,197	100,000	90,040	100,000	100,000	100,000	0	100,000
<p><u>1/</u> OSM collects information through various information systems and from various States and Tribes participating in OSM programs. The information is considered reliable for indicating performance trends and being the basis for decision making. <u>2/</u> Targets to be revised to reflect better baseline data.</p> <p>*Estimated data: State regulatory authorities provided data for the time period July 1, 2003, to June 30, 2004, to accommodate the accelerated publishing requirements of the OSM Annual Report. Federal program data submitted for the federal fiscal year.</p> <p>SP = DOI Strategic Plan Measure; PART = Program Assessment Rating Tool Measure; PPM = Proposed PART Measure; BUR = Bureau Measure</p>								