

	<b>U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT</b>  <b>DIRECTIVES SYSTEM</b>	<b>Subject Code:</b> STP-1
		<b>Transmittal Number:</b> 944
		<b>Date:</b> OCT 20 2008
<b>Subject:</b> Processing of Proposed State/Tribal Regulatory Programs and Abandoned Mine Land Reclamation Plans; Amendments; and Part 732 and Part 884 Notifications		
<b>Approval:</b> Brent Wahlquist		<b>Title:</b> Director

1. **Purpose.** This directive establishes policy and procedures for:
  - a. Reviewing and processing proposed state/tribal regulatory programs and state/tribal Abandoned Mine Land Reclamation (AMLR) plans.
  - b. Reviewing and processing proposed amendments to approved state/tribal regulatory programs and state/tribal AMLR plans.
  - c. Requiring states/tribes to amend their regulatory programs following revision of Federal statutes or regulations or the identification of programmatic deficiencies or significant programmatic changes.
  - d. Requiring states/tribes to amend their AMLR plans following revision of Federal statutes or regulations or the identification of programmatic deficiencies or significant programmatic changes.
  
2. **Summary of Changes.** This directive has been revised to:
  - a. Be consistent with the Federal requirements in 30 CFR 884.14 and 884.15, remove the requirement for notice and comment through publication in the Federal Register for proposed AMLR plans, amendment of those AMLR plans or removal of AMLR plan conditions.
  - b. Require that, prior to the Office of Surface Mining Reclamation and Enforcement (OSM) approval of a proposed AMLR plan, major amendment to an AMLR plan or removal of an AMLR plan condition, OSM hold a public hearing or make a finding concerning the adequacy of the state's/tribe's notice and opportunity for public comment in the development of the plan, plan amendment or condition removal.
  - c. Add a requirement for the OSM regions and/or Headquarters Program Support Directorate, as appropriate, to conduct a consistency review prior to final action on a proposed regulatory program/AMLR plan/program or plan amendment/removal of a program or plan condition or Part 732 or Part 884 notification.

d. Provide clarification concerning when OSM may impose required amendments in its final action on a proposed regulatory program, AMLR plan, program, or plan amendment.

e. Provide for tribal submission of a program to regulate coal exploration and surface coal mining and reclamation operations – in whole or in part – in accordance with subsection 710(j) added December 20, 2006, to the Surface Mining Control and Reclamation Act (SMCRA).

f. Incorporate references and terminology relevant to the new Federal Docket Management System.

g. Revise time periods and the schedule for processing state/tribal regulatory program amendments in accordance with OSM’s final rule at 70 FR 61194 (October 20, 2005).

h. Make other minor, organizational and editorial changes for purposes of clarity and consistency.

### 3. **Definitions and Acronyms.**

a. The following list of acronyms and abbreviations are used throughout this directive and its appendices:

ACHP	Advisory Council on Historic Preservation
AD/PS	Assistant Director, Program Support
ASLM	Assistant Secretary, Land and Minerals Management
AMLR	Abandoned Mine Land Reclamation
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
FDMS	Federal Docket Management System
FOD	Field Office Director or equivalent when a Program Manager or other position has the same responsibilities as a Field Office Director
FR	<u>Federal Register</u>
FS	Office of the Field Solicitor
OFR	Office of the Federal Register
OPM	Office of Personnel Management
OSM	Office of Surface Mining Reclamation and Enforcement
P.L.	Public Law
RD	Regional Director
SHPO	State Historic Preservation Officer
SMCRA	Surface Mining Control and Reclamation Act of 1977
SATS	State Amendment Tracking System
SRA	State Regulatory Authority
TRA	Tribal Regulatory Authority

b. Amendment. As defined in:

(1) 30 CFR 732.17(a) and (b) for Regulatory Programs. An amendment is any alteration of an approved state/tribal regulatory program other than changes having no effect

upon the implementation, administration or enforcement of the program. Changes to state/tribal statutes and regulations must be considered and processed as amendments regardless of their significance, except for correction of typographical errors and mistakes of a similar nature.

(2) 30 CFR 884.15(a) and (c) for AMLR Plans. An amendment is any alteration of an approved state/tribal AMLR plan other than nonsubstantive changes or minor revisions having no effect upon the implementation or administration of the plan.

c. Condition. A condition is a requirement imposed upon the state/tribe at the time of regulatory program or AMLR plan approval to correct a deficiency within a specified period of time. All final rules concerning regulatory program conditions must be signed by the Secretary or his/her designee. The Director or his/her designee signs final rules concerning conditions for AMLR plans.

d. Consistency Review. As used in this directive, a consistency review is a 15-day review conducted by designated personnel of a draft final rule for a proposed state/tribal regulatory program amendment or program condition removal; a draft final decision document for a proposed state/tribal AMLR plan amendment or removal of plan condition; or a draft final Part 732 or Part 884 notification. The purpose of the review is to improve consistency with SMCRA, the Federal regulations and OSM-approved policy. Each of the three region's draft final rules, decision documents and notifications are reviewed by the other two regions and Headquarters' Program support Directorate, as appropriate.

e. Final Decision Document. In the context of 30 CFR Part 884 and this directive, except as otherwise noted, a final decision document announces the Director's or the RD's decision on a proposed state/tribal AMLR plan or a plan amendment.

f. Final Rule. In the context of subsection 710(j) of SMCRA; 30 CFR Parts 731 and 732; and this directive, except as otherwise noted, a final rule is an FR document that announces the Secretary's or Director's decision on a proposed state/tribal regulatory program, or a program amendment. With respect to this directive, all FR documents are considered to be in draft form until signed by the appropriate official.

g. Formal Submission. A formal submission is a proposed amendment submitted by a state/tribe to OSM for processing under 30 CFR 732.17 for a regulatory program amendment or 30 CFR 884.15 for an AMLR plan amendment.

h. Part 732 Notification. (for Regulatory Programs) A Part 732 notification is a document in which the Regional Director notifies the State/Tribe that its regulatory program must be amended to be *in accordance with SMCRA* and *consistent with* the Federal regulations, as further defined in 30 CFR 730.5 and subsection 710(j) of SMCRA. Such notification may be necessary as a result of Federal regulation changes, state/tribal or Federal court decisions, or problems identified during oversight or other program review processes. Also, when deficiencies identified in a proposed amendment are not resolved before the final decision on that amendment is published, i.e., when the final rule imposes a required amendment, the FR document containing the final rule will be considered a Part 732 notification.

i. Part 884 Notification. (for AMLR Plans) A Part 884 notification is a document in which the Regional Director notifies the state/tribe that its AMLR plan must be amended, in order to meet the requirements of SMCRA and the Federal regulations. Such notification may be necessary as a result of Federal regulation changes, state/tribal or Federal court decisions, or problems identified during program evaluation or other program review processes. Also, when deficiencies identified in a proposed plan amendment are not resolved before the final decision on that amendment is published, i.e., when the final rule imposes a required amendment, the document containing the final rule will be considered a Part 884 notification.

j. Pre-Submission Assistance. Pre-submission assistance is assistance OSM provides upon state/tribal request when a state/tribe is drafting a proposed regulatory program, AMLR plan or amendment to its approved program or plan. This assistance occurs prior to the state/tribe's formal submission of the proposed program, plan or amendment and generally consists of OSM review and comment on the specific concept or language being considered. Documents that the state/tribe submits for such a review are not entered into the Administrative Record.

k. Proposed Rule. In the context of the 30 CFR Parts 731, 732, and this directive, a proposed rule is an FR document announcing receipt of a proposed State regulatory program, amendment, or subsequent modifications or explanations thereof. With respect to this directive, all FR documents are considered to be in draft form until signed by the appropriate official.

l. Required Amendment. A required amendment is a requirement, imposed by OSM in a final rule and codified in 30 CFR Subchapter T (for state/tribal regulatory programs), that the state/tribe amend its program or state/tribal plan to correct a deficiency identified after program or plan approval or to submit further justification of a provisionally approved rule or other provision. Required amendments also may be imposed by other forms of Part 732 (for regulatory programs) or Part 884 (for AMLR plans) notifications, but these generally are not called required amendments in this directive.

m. State/Tribal Regulatory Program (Regulatory Program or Program). A state/tribal regulatory program is a program established by a state/tribe and approved by the Secretary under either section 503, or subsection 710(j) of SMCRA and 30 CFR 732.13 to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and in accordance with SMCRA and the Federal regulations implementing SMCRA. If the state and OSM enter into a cooperative agreement for regulation on Federal lands, under 30 CFR Part 745, that agreement becomes part of the state program.

n. State/Tribal AMLR Plan (AMLR Plan or Plan). A state/tribal AMLR plan is a plan submitted by a state/tribe and approved by the Director under 30 CFR 884.14 for reclamation of abandoned mine lands in accordance with SMCRA and the Federal regulations implementing SMCRA.

o. Timetable for Enactment (Regulatory Program Amendments). A timetable for enactment of regulatory program amendments provides dates key to state/tribal adoption of an approved amendment, including the date(s) by which a state/tribe intends to submit a formal proposed written amendment to OSM. In accordance with 30 CFR 732.17(f)(1), an SRA/TRA must submit this timetable, along with either a description of an amendment to be proposed or a

proposed written amendment addressing identified deficiencies, within 60 days of receipt of a Part 732 notification.

p. Timetable for Enactment (Reclamation Plan Amendments). A timetable for enactment of reclamation plan amendments provides dates key to state/tribal adoption of an approved amendment, including the date(s) by which a state/tribe intends to submit a formal proposed written amendment to OSM. In accordance with 30 CFR 884.15(e), the Director, in consultation with the states/tribes, will establish a reasonable time for submission of an amendment, which is consistent with established state/tribal administrative or legislative procedures.

#### 4. Policy.

a. 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. The December 20, 2006, amendment of SMCRA stated at subsection 710(j) (1) (B) that for purposes of the implementation and administration of a (t)ribal program under (T)itle V (of SMCRA), any reference to a “state” in (SMCRA) shall be considered to be a reference to a “(t)ribe.” We encourage the formulation of regulatory programs and AMLR plans to meet those conditions. We will approve variations from the national regulations, if the variations are no less effective than the Federal regulations in meeting the standards of SMCRA.

b. We also encourage and foster assistance and communication with states/tribes prior to formal submission of regulatory programs, AMLR plans or program or plan amendments. All interactions, oral or written, should focus on resolving issues, so that, to the extent possible, we can process the formal submission within the time frames established in 30 CFR Parts 731, 732 and 884.

#### 5. Responsibilities.

##### a. Director.

(1) Sign all proposed rules and surname all final rules concerning proposed state regulatory programs submitted under 30 CFR Part 731 and proposed tribal regulatory programs submitted under subsection 710(j) of SMCRA.

(2) Sign all proposed and final decision documents concerning proposed state/tribal AMLR plans submitted under 30 CFR 884.14.

(3) Sign any necessary decision memoranda and letters to the state/tribe authorizing a specific action (e.g., imposition of grant conditions, initiation of proceedings under 30 CFR Part 733 or 30 CFR 884.16, or other appropriate measures) to be taken to secure an approvable and responsive timetable for enactment in response to a Part 732 notification for a regulatory program amendment or to a Part 884 notification for an AMLR plan amendment.

(4) Sign all proposed and final rules concerning preemption or supersession of state/tribal statutory, regulatory or other program provisions.

(5) Prepare decision memoranda for the Secretary of the Interior on final rules pertaining to state regulatory programs proposed under 30 CFR Part 731 and Tribal regulatory programs submitted under subsection 710(j) of SMCRA. Also review and sign decision memoranda prepared by the RD for final rules pertaining to state/tribal regulatory program amendments involving conditions of approval.

(6) Approve AMLR plan amendments, including those involving conditions of approval and transfers of emergency program responsibilities from OSM to the states/tribes.

b. Assistant Director, Program Support.

(1) Review and process state regulatory programs submitted under 30 CFR Part 731, tribal regulatory programs submitted under subsection 710(j) of SMCRA and state/tribal AMLR plans submitted under 30 CFR Part 884. Coordinate preparation of all associated FR or final decision documents.

(2) Review all draft FR documents (both proposed and final rules) concerning preemption or supersession of state/tribal provisions.

(3) Prepare a template of all changes for Part 732 and Part 884 notifications resulting from Federal statutory or regulatory changes and from state/tribal or Federal court decisions and provide guidance to the RD in preparing notification letters under 30 CFR 732.17 and 884.15.

(4) Obtain all necessary Headquarters signatures/surnames on and coordinate and track the flow of state/tribal regulatory program rule documents and send documents to AD/PS who will transmit to OFR for publication in the FR.

(5) With the AD/PS, coordinate resolution of any OFR concerns about FR documents with the OSM signing official.

(6) Obtain all necessary Headquarters signatures/surnames on state/tribal final AMLR plan decision documents.

(7) Coordinate and track the flow of state/tribal final AMLR plan decision documents through Headquarters.

(8) Coordinate and help the RD resolve issues affecting national policy resulting from legal or other reviews of state/tribal regulatory program or AMLR plan amendments.

(9) Assign an FDMS docket number when requested.

(10) Send all proposed and final rules concerning state/tribal regulatory program or regulatory program amendments to the OFR for publication. Prior to publication in

the FR, distribute the final rules to Congress and the General Accounting Office for review in accordance with P.L. 104-121.

(11) Inform the signing official of any OFR concerns about FR documents. With the Division of Regulatory Support, coordinate resolution of these concerns.

c. Regional Director.

(1) Prepare for the Director's signature any necessary memoranda and letters to the state/tribe regarding actions that the Director may authorize (e.g., imposition of grant conditions, initiation of 30 CFR Part 733 or 30 CFR 884.16 procedures) to secure an approvable and responsive timetable for enactment in response to a Part 732 or Part 884 notification.

(2) Sign Part 732 notifications, including those resulting from state/tribal notifications under 30 CFR 732.17(b).

(3) Sign Part 884 notifications, including those resulting from state/tribal notifications under 30 CFR 884.15(c).

(4) Evaluate all proposed state/tribal regulatory program and AMLR plan amendments and assist with evaluation of all proposed state/tribal regulatory programs and AMLR plans (to include formal submissions and any drafts or concepts submitted for comment prior to the formal submission) for consistency with Federal requirements. Make sure that all necessary analytical and technical resources are provided to complete a timely review. With the FOD, initially review the submission to determine whether it can be evaluated properly in light of state/tribal program/plan amendment submission guidelines. If a review cannot be done because the state/tribe did not follow the guidelines for submission of a state/tribal regulatory program or AMLR plan amendment, the RD may return the submission through the FOD requesting that the state/tribe provide the missing material.

(5) Coordinate any necessary legal reviews of program-, plan- or amendment-related issues with the FS. With coordination and help from the AD/PS, resolve issues affecting national policy resulting from legal or other reviews of state/tribal regulatory program or AMLR plan amendments.

(6) With the FOD, coordinate consultation on formal submissions with the SHPO or the ACHP when requested by the SHPO or the ACHP.

(7) With the AD/PS, draft all proposed and final rules concerning submission of regulatory programs and all final decision documents concerning AMLR plans. Final rules and final AMLR decision documents will be drafted after obtaining comment from the other two Regional Directors and AD/PS regarding decisions made on similar submissions.

(8) Prepare all proposed and final rules concerning regulatory program amendments or final decision documents concerning AMLR plan amendments. Final rules and final AMLR decision documents will be prepared after obtaining comment from the other two Regional Directors regarding decisions made on similar submissions.

(9) Sign all proposed rules concerning state/tribal regulatory programs (except those pertaining to preemption or supersession of provisions of state/tribal laws or regulations).

(10) Obtain surname of the FOD and the FS for all final rules concerning state/tribal regulatory program and for all final decision documents concerning state/tribal AMLR plan amendments.

(11) Sign all final rules concerning state/tribal regulatory program amendments or final decision documents concerning state/tribal AMLR plan amendments, except this authority does not extend to those final rules pertaining to state/tribal regulatory program conditions or final decision documents pertaining to state/tribal AMLR plan conditions; to preemption or supersession of state/tribal regulatory program provisions; or to transfers of emergency program responsibilities to the states/tribes. In the case of these exceptions, the RD will prepare, but does not sign, the final rule or final AMLR decision document. When applicable, also prepare, for the Director's signature, a memorandum recommending that the Secretary sign the final rule.

(12) Meet and otherwise communicate with the state/tribe as appropriate.

(13) Forward FR document and final decision packages to Headquarters (ADPS).

(14) As appropriate, provide the Public Affairs Officer with a copy of the FR document for preparation of a news release.

(15) Monitor the status of formal submissions and reviews of drafts or concepts submitted prior to proposed formal amendments to facilitate meeting review time frames.

(16) Make sure that the amendment tracking and reporting system (currently SATS) is properly maintained.

(17) Maintain a complete and up-to-date copy of the approved state/tribal regulatory program and the approved state/tribal AMLR plan.

d. Field Office Director.

(1) Evaluate and approve or disapprove proposed state/tribal timetables for amendment enactment or requests for changes to an existing state/tribal timetable for enactment. Also monitor implementation progress and results, and provide any reports required by the Director or the RD.

(2) With the RD, coordinate the review of proposed formal state/tribal regulatory program and AMLR plan amendments according to the procedures outlined in Appendices C, D and E. Appendix F provides procedures for review and comment on proposed draft amendment language or concepts.

(3) Contact AD/PS to obtain an FDMS docket number when needed and establish the Administrative Record file (and ensure that it is maintained) in accordance with OSM Directive INF-2.

(4) Notify the RD that the proposed state/tribal regulatory program or AMLR plan amendment is available in FDMS and request that the RD conduct a technical evaluation.

(5) Surname final rules that amend state/tribal regulatory programs and final decision documents that amend state/tribal AMLR plans.

(6) Meet and otherwise communicate with the state/tribe and other parties to discuss programmatic issues and amendments.

(7) Notify the state/tribe of FR document publication dates and provide them with the website address or electronic link to the FR document concerning state/tribal regulatory program or amendments immediately upon following FR publication (<http://www.regulations.gov>); and notify the state/tribe of the date a final decision document is signed for AMLR plans and plan amendments and provide the state/tribe with a copy of the decision.

(8) As part of the oversight and evaluation process, identify issues which require state/tribal regulatory program or AMLR plan amendments and help draft any resulting Part 732 or Part 884 notifications for the RD's signature.

(9) Track all conditions of approval, required amendments, and Part 732 and Part 884 notifications, and provide the state/tribe with reminder notices of due dates.

(10) Obtain a copy of each amendment as finally adopted by the state/tribe following OSM's approval and compare it with the version OSM approved; add a copy of both the adopted amendment and the comparison findings, if any, to the Administrative Record and notify the RD of their availability.

(11) Make every effort to review all official state/tribal registers or other periodicals containing new and revised laws, regulations or other program components in both proposed and final form.

(12) Make every effort to review all transcripts or minutes of meetings of the state/tribal rulemaking body.

(13) Help the AD/PS review state/tribal regulatory program and AMLR plan submissions.

(14) Help the RD evaluate state/tribal regulatory program and AMLR plan amendment needs, following receipt of the template prepared by the AD/PS of all revisions required as a result of changes in Federal statutes and regulations and Federal or state court decisions.

e. Public Affairs Officer.

Prepare news releases concerning state/tribal regulatory programs, AMLR plans and program and plan amendments, as appropriate.

f. Congressional Liaison Officer.

(1) Obtain and distribute information regarding Congressional actions affecting state/tribal regulatory programs and AMLR plans.

(2) Notify the state Congressional delegation or tribal entity of the Secretary's actions concerning proposed state regulatory programs submitted under 30 CFR Part 731 and proposed tribal regulatory programs submitted under subsection 710(j) of SMCRA.

6. Procedures.

a. Detailed procedures and related requirements for the processing of proposed state/tribal regulatory programs, AMLR plans, program and plan amendments (both formal submissions and draft proposed language or concepts), Part 732 and Part 884 notifications and timetables for enactment of state/tribal regulatory program and AMLR amendments are located in Appendices A through M.

b. Calculation of Time Periods. All time periods referenced in this directive, except as otherwise indicated, will be calculated according to 30 CFR 700.15, which requires the use of calendar days for prescribed time periods of 7 or more days.

7. Reporting Requirements. None

8. Effect on Other Documents. Supersedes OSM Directive STP-1, "Processing of Proposed State/Tribal Regulatory Programs and Abandoned Mine Land Reclamation (AMLR) Plans; Amendments; and Part 732 and Part 884 Notifications" Transmittal Number 855, July 31, 2000.

9. References.

a. Federal Register Document Drafting Handbook, published by OFR.

b. OSM Directive INF-2, Administrative Records System.

c. Abandoned Mine Land Reclamation Program Guidelines, 66 FR 31250, June 11, 2001.

d. Opportunity to Amend State/Tribal Reclamation Plans to Include Provisions for Emergency Reclamation Activities, 47 FR 42729, September 29, 1982.

e. Guidelines for Contacts with Employees and Officials During Consideration of State Permanent Regulatory Programs, 44 FR 54444, September 19, 1979.

f. Alternative Bonding Systems: An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems, November, 1990.

g. OSM Directive OPM-5, Delegations of Authority.

10. **Effective Date.** Upon issuance

11. **Distribution.** By electronic format

12. **Appendices.**

a. Appendix A: Guidelines for Evaluating Proposed State/Tribal Regulatory Programs, AMLR Plans, and Program or Plan Amendments

b. Appendix B: Processing of Proposed State/Tribal Regulatory Programs

c. Appendix C: Processing of State/Tribal AMLR Plans and Formal Major Amendments Including Those Affecting the AML Emergency Program Authority or Removing Plan Conditions

d. Appendix D: Processing of Formal State/Tribal Regulatory Program Amendments

e. Appendix E: Processing of All Formal State/Tribal AMLR Plan Amendments Other Than Major Amendments

f. Appendix F: Pre-Submission Assistance with Developing State/Tribal Regulatory Programs, AMLR Plans and Program and Plan Amendments

g. Appendix G: Processing of Part 732 Notifications

h. Appendix H: Processing of Part 884 Notifications

i. Appendix I: Processing of State/Tribal Timetables for Amendment Enactment or Changes to an Existing Timetable for Enactment

j. Appendix J: Standards for Comparison of State/Tribal Regulatory Programs and Amendments with SMCRA and the Federal Regulations

k. Appendix K: Standard for Comparison of State/Tribal AMLR Plans and Amendments with SMCRA and the Federal Regulations

l. Appendix L: Considerations for Reviewing Alternative Bonding Systems

m. Appendix M: Distribution List for State/Tribal Regulatory Program and AMLR Plan Submissions and Amendments

n. Appendix N: Environmental Protection Agency Concurrence Procedures

**Contact:** Program Support Directorate, Division of Regulatory Support

## APPENDIX A

### **Guidelines for Evaluating Proposed State/Tribal Regulatory Programs, AMLR Plans, and Program or Plan Amendments**

#### 1. Review Team.

We encourage the RD to form a review team, which should include one or more Field Office representatives and, as needed, members of technical and professional disciplines, to analyze state/tribal submissions and prepare the final rules and any related correspondence with the state/tribe. The regional archeologist/historian will be a member of the team reviewing submissions that may contain provisions concerning historic and cultural interests. (If a region has no such position on staff, the team may contact the archeologist/historian from another region for any needed input.) All work of the team will be supervised by the RD through the team leader. The FOD may provide other input for team consideration by submitting formal comments during the public comment period.

#### 2. Evaluation Guidelines.

At minimum, we must consider the following when evaluating proposed state regulatory programs, AMLR plans and program or plan amendments to see if they meet Federal requirements:

- a. SMCRA and its implementing Federal regulations.
- b. Preambles to proposed, final and superseded Federal regulations.
- c. Explanations provided by the state/tribe.
- d. OSM policy statements and directives. For AMLR plans and plan amendments, this includes OSM's "(AMLR) Program Guidelines for Reclamation Programs and Projects" (66 FR 31250, June 11, 2001), as applicable.
- e. Comments received from both internal and external reviewers.
- f. Legal and technical reference materials.
- g. Actions taken concerning other state/tribal programs and plans.
- h. Other relevant available information.

Appendix J contains further guidance concerning the standards of comparison and the proper terminology to use for regulatory programs and amendments. Appendix K provides this information for AMLR plans and amendments. Appendix L provides guidance for reviewing

regulatory program alternative bonding systems proposed under 30 CFR 800.11(e) and section 509(c) of SMCRA.

## APPENDIX B

### Processing of Proposed State/Tribal Regulatory Programs

#### 1. General.

a. The Federal Regulations at 30 CFR 731.12 specify that a state may submit a program to regulate coal exploration and surface coal mining and reclamation operations to the Director at any time.

b. Subsection 710(j) of SMCRA specifies that an Indian tribe may apply for, and obtain the approval of, a tribal program to regulate, in whole or in part, surface coal mining and reclamation operations on reservation land under the jurisdiction of the tribe.

c. All proposed state/tribal regulatory programs must be processed in accordance with this Appendix.

d. To facilitate processing of these submissions, we strongly encourage the states/tribes to:

(1) Submit draft language and/or concepts for preliminary review and comment prior to submitting formally. See Appendix F for draft language/concept review procedures.

(2) Either transmit all submissions electronically, or include an electronic copy of the program and any supplementary supporting material as part of the submission package.

e. Follow the guidelines contained in Appendix A, "Guidelines for Evaluating Proposed State/Tribal Regulatory Programs, AMLR Plans, and Program or Plan Amendments," to determine whether the proposed state/tribal regulatory program meets Federal requirements.

f. Draft FR documents in accordance with the content requirements of 30 CFR 732.11(a) and the format requirements of the "Federal Register Document Drafting Handbook."

#### 2. Procedures and Responsibilities.

a. Within 5 days of receipt of a proposed state/tribal program, the FOD must:

(1) Contact AD/PS to obtain an FDMS docket number and establish the Administrative Record file (and ensure that it is maintained) in accordance with OSM Directive INF-2

(2) Notify the RD that the proposed state/tribal program is available in FDMS and request that the RD conduct a technical evaluation.

(3) Request that the Public Affairs Officer prepare a news release announcing the submission.

b. Immediately upon receipt, the RD must:

(1) Assign a SATS identification number to the proposed program for purpose of tracking processing time.

(2) Enter the appropriate data into the tracking system and update the system throughout the processing of the proposed program

(3) Forward one copy or ensure that a copy has been forwarded to the FS with a request for comments.

c. With the FOD and the RD, the AD/PS must prepare an FR document that:

(1) Announces receipt of the submission,

(2) Invites public comment on the adequacy of the submission and

(3) Identifies the time and place of the public hearing, which may be held no sooner than 40 days following the date of publication in the FR. Hearings must be conducted according to the requirements of 30 CFR 732.11(b). Verbatim transcripts of hearings and minutes or other summaries of meetings must be kept and entered into the Administrative Record.

d. The AD/PS must then obtain all necessary surnames and the signature of the Director before sending the document for publication in the FR.

e. The FOD, in consultation with the AD/PS, must prepare:

(1) Letters notifying each of the agencies listed in Appendix M of the receipt of the proposed state/tribal regulatory program, including:

(a) A request for:

1. EPA concurrence, within 90 days of receipt of OSM's request, in the approval of any provisions relating to air or water quality standards or their applicability (see Appendices M and N), and

2. A U.S. Fish and Wildlife Service determination under Section 7 of the Endangered Species Act or a self-certifying notice of compliance with the terms of the September 24, 1996, "Formal Section 7 Biological Opinion and Conference Report on Surface Coal Mining and Reclamation Operations Under the Surface Mining Control and Reclamation Act of 1977"

(b) The website address or electronic link to the proposed program in FDMS (<http://www.regulations.gov>).

(2) Letters to the state Governor or the tribal representative and the proposed regulatory authority acknowledging receipt of the submission.

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

f. If the SHPO or the ACHP requests consultation on any provisions that may affect historic or cultural interests, the FOD will immediately notify the RD. The RD, with the FOD, will arrange any necessary meeting(s) with the SHPO and/or the ACHP.

g. During the 30 days after the comment period closes, the FOD, with the RD, must ensure that any paper copies of comments received, the transcript of the public hearing (whether electronic or in paper copy) and any paper copies of other relevant documents are entered into FDMS.

h. With the FOD and the RD, the Division of Regulatory Support then must review:

a. The proposed state submission as specified in 30 CFR 732.11(d) and 732.13 to determine whether it meets the requirements of 30 CFR 731.14, or

b. The proposed tribal submission as specified in subsection 710(j) of SMCRA and in the Federal regulations at 30 CFR 732.11(d) and 732.13 to determine whether it meets the requirements of 30 CFR 731.14 as appropriate for specific elements of the regulatory program which the tribe proposes to assume.

i. The AD/PS, with the Division of Regulatory Support, must also:

(1) With the FOD and the RD, prepare all documents that the Director and the Secretary will need during their decision process, including option papers, correspondence and FR documents.

(2) Forward a copy of the draft final rule to the three RDs for a consistency review. A designated staff member will check and determine whether his/her region has made any decisions in a final rule on a similar program submission, but decided differently. The RDs must send their reviews to AD/PS within 15 days of the request.

(3) Through the FOD, obtain state/tribal concurrence with any conditions of approval.

(4) Obtain appropriate surnames and signatures for the FR document.

(5) Notify the Congressional Liaison Officer of the final decision on the proposed program.

(6) Request that the Public Affairs Officer prepare a news release.

j. The Congressional Liaison Office must notify the state's Congressional delegation or the Congressional delegation of the state in which tribe resides, as appropriate, of the Secretary's decision prior to its publication in the FR.

k. The FOD must:

(1) Notify the SRA/TRA of the publication date of the Secretary's decision in the FR.

(2) Provide the state/tribe with the website address or electronic link to the FR document immediately upon its publication (<http://www.regulations.gov>)

(3) After publication of the Secretary's decision in the FR, obtain a copy of the program as finally adopted by the state/tribe and review it to confirm that, except for typographical or similar errors, the program has been adopted in a form identical to that which was approved. The FOD, with the RD, then must ensure that the adopted program and a summary of the review is entered into FDMS and notify the AD/PS of its availability.

(4) Track any conditions of approval, providing reminder notices of due dates to the state/tribe as necessary.

## APPENDIX C

### **Processing of State/Tribal AMLR Plans and Formal Major Amendments Including Those Affecting the AML Emergency Program Authority or Removing Plan Conditions**

#### 1. General.

a. The following processing procedures apply to AMLR plans and major amendments changing the objectives, scope or major policies followed by the state/tribe in conducting its reclamation program, including the removal of plan conditions or affecting conduct of the emergency program. All other formal AMLR plan amendments are to be processed according to the procedures in Appendix E.

b. To facilitate processing of these submissions, we strongly encourage the states/tribes to:

(1) Submit draft language and/or concepts for preliminary review and comment prior to submitting formally. See Appendix F for draft language/concept review procedures.

(2) Either transmit all submissions electronically, or include an electronic copy of the plan or plan amendment plus any supplementary supporting material as part of the submission package.

(3) A section-by-section comparison of the state's/tribe's proposed plan/amendment and the Federal regulations in a side-by-side format or, alternatively, citations of the corresponding Federal statutory provision or regulation, if any, and an explanation of the differences.

(4) Major amendments should include:

(a) The entire section or subsection for the state/tribe rule, statute, policy statement or other plan document being amended.

(b) A summary that clearly describes the purpose of the proposed change(s), including identification of any plan conditions or required amendments to be satisfied by the proposal.

(c) If the revisions differ from the corresponding Federal provisions, the rationale, technical justification and legal effects of the changes.

(d) The precise identification of existing language being deleted and new language being added, e.g., underlining new language and/or bracketing or striking out language to be deleted.

(e) A description of public involvement, including public notice and opportunity for comment, in its development.

(5) If determined necessary as a result of OSM's review, a legal opinion from either the attorney general for the state/tribe or the chief legal officer of the State/Tribal reclamation authority stating that the proposed amendment complies with all applicable State or Tribal and Federal laws, regulations and other applicable requirements.

c. The RD, with the FOD, may return a submission to the state/tribe if the state/tribe deviates from these guidelines in a manner that substantially hinders the review. When such a determination is made, the FOD promptly (within 5 days of receipt) must request in writing that the state/tribe provide the missing material. If the state/tribe does not comply with this request, the RD with the FOD, may review the original submission in accordance with this Appendix.

d. Follow the guidelines contained in Appendix A, "Guidelines for Evaluating Proposed State/Tribal Regulatory Programs, AMLR Plans, and Program or Plan Amendments," to determine whether the proposed state/tribal AMLR plans and major plan amendments, including assumption of emergency program authority or that relate to a condition of plan approval meet Federal requirements.

e. Draft any announcement of public hearing and the final decision document in accordance with the content requirements of 30 CFR 884.13.

## 2. Procedures and Responsibilities.

### a. Initial Administrative Processing.

(1) Within 5 days of receipt of a proposed state/tribal plan or major amendment, the FOD must:

(a) Establish the Administrative Record file (and ensure that it is maintained) in accordance with OSM Directive INF-2.

(b) Notify the RD that the proposed state/tribal plan or major amendment is available in FDMS and request that the RD conduct a technical evaluation.

(2) Immediately upon receipt the RD must:

(a) Assign a SATS identification number to the proposed plan or major amendment for the purpose of tracking processing time.

(b) Enter the appropriate data into the tracking system and update the system throughout the processing of the plan or major amendment.

b. Agency and Public Comment Solicitation.

(1) Within 5 days of receipt of a formal submission, the RD, with the FOD, must send a copy of the plan/amendment to the agencies listed in Appendix M with a request for comments within 30 days.

(2) Determine whether the state/tribe provided adequate notice and opportunity for public comment in the development of the submission.

(a) If the state/tribal process for public participation and involvement in the preparation of the submission provided adequate notice and opportunity for public comment in the development of the AMLR plan or major amendment, the RD will include a finding to that effect in its final decision document and will proceed with its review.

(b) If the state/tribe did not provide adequate notice and opportunity for public comment in the development of the submission, the RD must, in consultation with the FOD, prepare a notification of a public hearing to be published in the major newspapers of the State within 10 days after the initial receipt of a proposed state/tribal plan or major amendment. Said notification will:

(1) Announce receipt of the submission.

(2) Invite public comment on the adequacy of the submission.

(3) Specify where the submission is available for review.

(4) Identify the time(s) and place(s) where OSM will conduct the public hearing(s) which may be held no sooner than 30 days after initial receipt of the submission. Hearings are conducted according to the requirements of 30 CFR 884.14(a)(1). Verbatim transcripts of hearings, minutes or other summaries of the meetings, or of state/tribal public hearings or meetings if accepted in lieu of an OSM hearing, must be kept and entered in the Administrative Record.

(c) If OSM will hold a public meeting (or meetings), the RD, with the FOD, immediately must notify appropriate state/tribal agency.

(d) If the SHPO or the ACHP requests consultation on any plan/amendment provisions that may affect historic or cultural interests, the FOD will immediately notify the RD. OSM is not obligated to adopt SHPO or ACHP recommendations that it finds inappropriate, but, if requested, we are required to consult with the SHPO or ACHP on possible mitigation measures before taking final action. The RD, with the FOD, will arrange any necessary meeting(s) with the SHPO or the ACHP.

(3) Forward one copy or ensure that a copy has been forwarded to the FS with a request for concurrent legal review and comments.

c. Submission Review

(1) Within 15 days after first receiving a proposed state/tribal plan or major amendment, the FOD must prepare:

(2) Transmittal letters soliciting comments from pertinent Federal and other agencies having an interest in the plan or major amendment (see Appendix M), and

(3) Letters, signed by the FOD, to the State Governor or Tribal representative, and the proposed reclamation authority acknowledging receipt of the submission.

(4) Within 35 days of initial receipt of the submission and after the last public hearing (if any) is held, the FOD, with the RD, must ensure that the transcript of any public hearing (whether electronic or in paper copy) and any paper copies of other relevant documents are entered into FDMS.

(5) Within 30 days following the last public hearing (if any), the RD must analyze all comments received, and:

(a) If there are no apparent deficiencies in the proposed AMLR plan or major amendment, or if the deficiencies have been resolved, prepare a draft final decision document and forward a copy of the draft document to the other two RDs for a consistency review and response to the requesting RD within 15 days of receipt. Then the RD will:

(1) Finalize the draft decision document and prepare a memorandum to the Director recommending signature;

(2) Obtain the FS and the FOD surnames, and submit the package to the AD/PS for concurrence.

(b) If the analysis discloses any apparent deficiencies, immediately contact the state/tribe orally, through the FOD, to determine whether the state/tribe prefers to address these deficiencies before or after signature of the final decision document. The FOD must document the conversation(s) for the Administrative Record.

(1) If the state/tribe prefers to address the deficiencies after signature, or does not indicate a preference or fails to respond within 10 days, the RD must prepare a draft final decision document; obtain the results of the consistency review by the two other RDs; and finalize and surname a draft final decision document and a memorandum to the Director recommending signature. The RD then must obtain FS and FOD surnames and submit the package to the AD/PS for concurrence, or,

(2) If the state/tribe prefers to address the deficiencies before signature, the RD must prepare, and the FS must surname, a letter to the state /tribe outlining the areas in which the plan or major amendment appears to be inconsistent with Federal requirements and the nature of these deficiencies. The letter also must:

(a) Give the state/tribe an opportunity to meet with OSM and discuss the issues;

(b) Request that the state/tribe send any revisions or other materials or rebuttals to OSM within the 30 days after receipt of the letter; and

(c) Suspend the 90-day period for the Director to act on an AMLR plan as specified in 30 CFR 884.14(a), establishing instead a specific period not to exceed 30 days within which to resolve the apparent deficiencies.

(d) Within 25 days of the close of the last public hearing, the RD must forward the letter to the FOD for signature and delivery to the state/tribe. The FOD must furnish a copy of the signed letter to the RD.

d. Action Taken After Review

(1) Within 10 days after receiving the RD's draft final decision document and memorandum recommending the Director's signature, the AD/PS must review the package for concurrence and must obtain all necessary Headquarters' signatures and the signature of the Director.

(2) The FOD must notify the state/tribe of the date of the Director's decision, provide the state/tribe with a copy of the decision document immediately upon after it is signed and enter a copy into the Administrative Record.

(3) After the Director's signature of the decision document, the FOD must:

(a) Obtain a copy of the plan or major amendment as finally adopted by the state/tribe and review it to confirm that, except for typographical or similar errors, the plan or major amendment has been adopted in a form identical to that which was approved.

(b) Forward a copy of the adopted version and a summary of the comparison review to the RD and the AD/PS and track any conditions of plan approval, providing reminder notices of due dates to the state/tribe as necessary.

(4) The RD must maintain a complete copy of the approved state or tribe AMLR plan and related documents.

e. State/Tribal Adoption of Plan/Amendment.

(1) Approval of a plan/amendment is conditioned on the state's/tribe's adoption of the plan/amendment in a form identical to that in which it was reviewed, except for the correction of typographical errors. If the state/tribe otherwise modifies the proposed plan/amendment in the adoption process, the modified plan/amendment must be processed in the same manner as a new proposed plan/amendment, and the modifications may not become effective for state/tribal plan purposes until approved by OSM.

(2) If the state/tribe fails to adopt a plan/amendment within a reasonable time following OSM approval or fails to diligently pursue adoption of the plan/amendment, the FOD will consult with the RD as to the proper course of action. Specifically, the FOD may (after consulting with the RD) consider including adoption of the plan/amendment in the state's/tribe's annual performance agreement under Directive AML-22, "Evaluation of State and Tribal Abandoned Mine Land Programs."

(3) If the state/tribe adopts or implements a proposed amendment before OSM approval, and if OSM subsequently disapproves the amendment or a portion thereof, it may be necessary to consider suspension of the reclamation plan, in whole or in part, under 30 CFR 884.16; reduction, suspension or termination of existing AML grants under 30 CFR 886.18; or withdrawal from consideration for approval of all grant applications submitted under 30 CFR 886.15.

(4) If the amendment as adopted is identical to the approved plan/amendment, or differs from it only in the correction of typographical errors, the FOD must forward one copy to the RD.

## APPENDIX D

### Processing of Formal State/Tribal Regulatory Program Amendments

#### 1. General.

a. Paragraph (g) of 30 CFR 732.17 specifies that no change to laws or regulations that make up the approved state program may take effect until approved as an amendment. This includes organizational changes, e.g., staffing, resources and funding, even if intended to be non-substantive.

b. All formal amendments to state/tribal regulatory programs must be processed in accordance with this Appendix.

c. We strongly encourage states/tribes to submit proposed amendment language and/or concepts for preliminary review and comment prior to their formal submission, in order to allow us to identify and resolve issues early in the amendment process. See Appendix F for draft language/concept review procedures.

d. We encourage states/tribes to adhere to the following processing guidelines when submitting formal amendments:

(1) If first submitted as draft proposed language and/or concepts include the material as it will be formally proposed at the state/tribal level or otherwise ensure that an amendment will not be formally adopted or become effective until approved by OSM. See Appendix F.

(2) Transmit program amendments electronically or, if transmitted in hard copy, include an electronic copy of the amendment and any supplemental supporting material as part of the amendment package.

(3) A complete formal amendment package should contain:

(a) A section-by-section comparison of the state's/tribe's proposed amendment and the Federal regulations in a side-by-side format or, alternatively citation of the corresponding Federal statutory provision or regulation, if any, and an explanation of the differences.

(b) The entire section or subsection of the state/tribal rule, statute, policy statement or other program document being amended.

(c) A summary that clearly describes the purpose of the proposed change(s), including identification of any conditions of state/tribal program approval or required amendments to be satisfied by the proposal.

(d) If the revisions differ from the corresponding Federal provisions, the rationale, technical justification and legal effect of the changes.

(e) The precise identification of existing language being deleted and new language being added, e.g., underline new language and bracket or strike-out language to be deleted.

(f) The identification of the state's/tribe's submission as a formal submission. Formal submissions and requests for pre-submission assistance should not be combined.

(g) If deemed necessary as a result of OSM's review, a legal opinion from either the attorney general of the state, or the chief legal officer of the tribe, SRA or TRA stating that the proposed amendments do not conflict with any other provisions of existing state/tribal laws or regulations.

e. The RD, with the FOD, may return a submission to the state/tribe if the state/tribe deviates from these guidelines in a manner that substantially hinders review. When such a determination is made, the FOD promptly (within 5 days of receipt) must request in writing that the state/tribe provide the missing material. If the state/tribe does not comply with this request, the RD, with the FOD, may review the original submission in accordance with this Appendix.

f. The guidelines in Appendix A of this Directive, "Guidelines for Evaluating Proposed State/Tribal Regulatory Programs, AMLR Plans, and Program or Plan Amendments," must be considered when evaluating proposed state/tribal regulatory program amendments to see if they meet Federal requirements.

g. The RD must follow the format requirements of the "Federal Register Document Drafting Handbook" when preparing draft rule documents.

## 2. Procedures and Responsibilities.

### a. Initial Administrative Processing.

(1) Within 3 days of receipt of a formal submission, the FOD must:

(a) Contact AD/PS to obtain an FDMS docket number and establish the Administrative Record file (and ensure that it is maintained) in accordance with OSM Directive INF-2.

(b) Notify the RD that the proposed amendment is available in FDMS.

(2) Immediately upon receipt, the RD must:

(a) Assign a SATS identification number to the proposed amendment to track processing time.

(b) Enter the appropriate data into the tracking system and update the system throughout the processing of the amendment.

b. Agency and Public Comment Solicitation.

(1) Within 5 days of receipt of a formal submission, the RD, with the FOD, must send a copy of the amendment to the agencies listed in Appendix M, with a request for comments within 30 days, or by the close of the public comment period specified in the FR document [with the exception of EPA. See section 2b (3)]. The request must include the website address or electronic link to the proposed program amendment in FDMS (<http://www.regulations.gov>).

(2) If the amendment may have an effect on historic properties or cultural resources, the letters sent to the SHPO and the ACHP must provide that OSM will proceed as if a determination of “no effect” is in place with respect to the consultation requirements of 36 CFR Part 800, unless comments to the contrary are received within 60 days of that notification. If the SHPO or the ACHP requests consultation on a proposed amendment, the final rule may not be published until the consultation has occurred. OSM is not obligated to adopt SHPO or ACHP recommendations that it finds inappropriate, but, if requested, we are required to consult with the SHPO or the ACHP on possible mitigation measures before taking final action. The RD, with the FOD, will arrange any necessary meeting(s) with the SHPO or the ACHP.

If the submittal will not have an effect on historic properties or cultural resources, the letters sent to the SHPO and the ACHP must request that comments be submitted within 30 days and include a sentence stating that none of the program revisions identified in the amendment pertain to cultural or historic resources.

(3) If the amendment affects air or water quality standards (effluent and emission limitations) or their applicability, letters to the EPA must request EPA concurrence within 90 days of receipt of OSM’s letter. Appendices M and N provide addresses and further instructions concerning these concurrence procedures.

(4) The RD will prepare, sign and forward to AD/PS a proposed rule announcing receipt of the amendment. AD/PS transmits the proposed rule to the OFR for publication. These actions must be completed with time sufficient to allow for publication of the proposed rule within 30 days of receipt of the amendment [30 CFR 732.17(h) (1)]. In establishing interim deadlines, the RD should consider that the OFR normally publishes a document within 3-4 working days after receipt.

(a) The FR document should establish a minimum public comment period of 30 days. However, in accordance with 30 CFR 732.17(h) (3), a 15-day public comment period may be used when the change(s) proposed in an amendment is (are) similar to change(s) in SMCRA or the Federal regulations, provided the full text of the amendment is published in the FR, or the document announces a reopening of the comment period.

(b) The RD may provide a copy of the draft proposed rule to the Public Affairs Officer for preparation of a news release.

(5) When the proposed rule is published in the FR, the FOD immediately must send one copy of the FR document to the SRA.

(6) No sooner than 5 days before the close of the public comment period announced in the FR (but no later than the close of the comment period), the FOD must 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 will be held instead. No hearing or meeting need be held if no one requests an opportunity to testify. Hearings must be conducted according to the requirements of 30 CFR 732.17(h) (5). Verbatim transcripts of hearings and minutes or other summaries of meetings must be kept and entered in the Administrative Record. The FOD must forward a copy of all hearing transcripts or summaries, written presentations, exhibits and comments to the RD.

c. Submission Review.

(1) The RD, with the FOD, must begin reviewing the submission immediately upon receipt. The FOD must forward any comments to the RD by the close of the public comment period. The FOD, with the RD, must ensure that any paper copies of comments received, the transcript of the public hearing (whether electronic or in paper copy), and any paper copies of other relevant documents are entered into FDMS.

(2) If either the RD or the FOD identifies legal issues in the amendment, the RD will send one copy or ensure that a copy has been sent to the FS with a request for comment on these specific issues. If the RD determines that the submission involves issues affecting national policy or there are unresolved issues resulting from the FS's review, the RD will request the AD/PS's assistance and coordination in resolving them. The RD must ensure that all issues resulting from the review are promptly identified and resolved, so that the submission may be processed within the time established in 30 CFR 732.17(h).

(3) The RD must analyze the comments received and, to the extent possible, complete analysis of the submission within 20 days of the close of the comment period.

d. Action Taken After Review.

(1) If the OSM or FS review identifies any problems, the RD will orally contact the state/tribe, through the FOD, to determine whether it prefers to address these problems before or after publication of the final rule. The FOD must document this response in a conversation record and enter it into the Administrative Record.

(2) If the state/tribe prefers to correct the problems before publication, the RD will prepare, and the FS surnames, a letter to the state/tribe.

(a) The letter should contain the following information:

(1) An outline of the areas in which the amendment appears to be inconsistent with Federal requirements and explain the nature of the inconsistencies.

(2) An invitation to meet with OSM for discussion of the issues if the state/tribe so wishes;

(3) A request that the state/tribe submit any revised rules or other materials or rebuttals within 30 days of its receipt of the letter; and

(4) A notification of suspension of the 7-month time period within which OSM is directed under 36 CFR 732.17(h) (13) to complete action on the amendment.

(b) The RD must forward the letter to the FOD for signature and delivery to the state/tribe. The FOD must furnish a copy of the signed letter to the RD.

(c) If the state/tribe provides additional material in response to OSM's concerns, the RD will prepare an FR document (within 5 days of receipt of the material) reopening the comment period (normally for 15 days, unless the new material is extensive or highly complex). The additional material must be distributed to the agencies listed in Appendix M and must be reviewed as outlined in Part 2.c. of this Appendix. Exceptions to this requirement for reopening the comment period will be made only for state/tribal responses that contain no new information or that merely identify errors and omissions in our initial analysis.

(3) If there are no apparent problems in the proposed amendment; or if the state/tribe does not prefer to correct the problems before publication, does not indicate a preference under Step 2.d. (1) above or fails to respond to OSM's inquiry as to its preference, the RD will prepare a final rule.

(4) The RD will forward a copy of the draft final rule to the two other RDs for a consistency review. A designated staff member will check and determine whether his/her region has made any decisions in a final rule on a similar issue, but decided differently. The two RDs must have their region's review sent back to the requesting RD within 15 days of receipt of the request.

(5) Final rule preparation.

(a) A final rule announces OSM's decision on the proposed amendment and revises 30 CFR Chapter VII, Subchapter T to reflect this decision. It contains findings describing how and why the proposed amendment is or is not consistent with Federal requirements. In addition, it includes a summary of all comments received and a discussion of their disposition.

(b) For amendments submitted in response to the requirements of 30 CFR 732.17(e), OSM may decide to:

(1) Approve the amendment, in whole or in part.

(2) Disapprove the amendment, in whole or in part.

(3) When the State's proposal is incomplete, (i.e., when it fails to include all necessary elements or supporting documentation but does not actually conflict with the corresponding Federal requirement), approve the amendment with any missing elements or other inconsistencies made the subject of a required program amendment. While imposing one or more required amendments in connection with a final decision on a state program amendment is not expressly authorized by 30 CFR 732.17, it has been a long-standing OSM practice. However, this practice should be used sparingly in order to avoid unnecessarily perpetuating the program amendment cycle and delaying finality.

(4) Defer a decision if:

(a) A judicial ruling on the corresponding Federal provision prevents approval of the amendment, but the issue of concern is under appeal on behalf of the Secretary. A deferral has the same effect as a disapproval except that, if OSM later decides to approve the amendment on the basis of a favorable court decision, no resubmission by the state/tribe is necessary, nor is any reopening of the comment period required, if the remanded Federal regulation is reinstated without change.

(b) A deferral of a decision on part of an amendment may facilitate approval or disapproval of the remaining provisions. However, deferrals should be avoided whenever possible because of the program implementation difficulties and indefinite tracking requirements they create.

(5) Take any combination of the above actions, as appropriate, for each specific provision of the amendment.

(c) For state/tribal initiative amendment submissions, OSM may decide to:

(1) Approve the amendment, in whole or in part.

(2) Disapprove the amendment, in whole or in part.

(d) In preparing a final rule, the RD must coordinate legal review of the rule with the FS. The FS and the FOD will surname the rule indicating their concurrence with the final rule.

(e) The RD must prepare a rule package and sign the rule, unless it involves a condition of program approval or preemption or supersession of state/tribal laws or regulations. If it does, the RD will surname the rule, prepare a memorandum from the Director to the Secretary recommending Secretarial signature and forward the rule package to AD/PS.

AD/PS must obtain appropriate surnames and signatures before forwarding the final rule for publication in the FR. (OFR normally publishes within 3-4 working days.).

(f) Final rules concerning state/tribal program amendments normally are made effective on the date that the final rule is published in the FR. However, effective dates may be adjusted to coordinate Federal actions with the state/tribal rulemaking process if so requested by the state/tribe.

(g) The RD may provide the Public Affairs Officer with a copy of the draft final rule for preparation of a news release, as appropriate.

(h) After publication of the final rule, the FOD must:

(1) Immediately forward one copy to the SRA/TRA, along with the website address or electronic link to the approved amendment.

(2) Review a copy of the amendment as finally adopted by the state/tribe to confirm that, apart from the correction of typographical and similar errors, the regulations or other amendment provisions have been adopted in a form identical to that in which they were approved. The FOD must forward a summary of the review to the RD. The FOD, with the RD, must ensure that the adopted provisions and a summary of the review are entered into FDMS.

(3) Track any required amendments imposed by OSM in the final rule and provide reminder notices of due dates to the state/tribe as needed.

(i) If, OSM does not approve a proposed amendment provision, the state/tribe may submit, within 60 days after publication of the Director's decision, a revised amendment for consideration by the Director. If more time is needed to submit the proposed amendment revision, the Director may grant an extension by specifying a date in the decision by which the state/tribe must submit revisions. The Director will approve or not approve the revised amendment submission in the same manner as a newly submitted amendment as provided by 30 CFR 732.17(h)(9).

e. State/Tribal Adoption of Amendment.

(1) Approval of an amendment is conditioned on the state's/tribe's adoption of the amendment in a form identical to that in which it was reviewed, except for the correction of typographical errors. If the state/tribe otherwise modifies the proposed amendment in the adoption process, the modified amendment must be processed in the same manner as a new proposed amendment, and the modifications may not become effective for state/tribal program purposes until approved by OSM.

(2) If the state/tribe fails to adopt an amendment within a reasonable time following OSM approval or fails to diligently pursue adoption of the amendment, the FOD will consult with the RD and may consider including adoption of the amendment in the state's/tribe's

performance agreement under Directive REG-8, “Oversight of State Regulatory Programs.” If these efforts at resolution fail, preemption or supersession of inconsistent provisions under 30 CFR 730.11 or initiation of proceedings under 30 CFR Part 733 may be considered.

(3) If the state/tribe adopts or implements a proposed amendment before OSM approval, and if OSM subsequently disapproves the amendment or a portion thereof, it may be necessary to formally set aside the disapproved provisions by preempting or superseding them according to the provisions and procedures of 30 CFR 730.11. However, preemption or supersession is not a routine or automatic occurrence. When a state/tribe implements or continues to implement disapproved provisions, the FOD must consult with the RD concerning the proper course of action.

(4) When the adopted regulations are identical to the approved regulations, or differ from them only in the correction of typographical errors, the FOD must forward one copy to the RD.

## APPENDIX E

### Processing of All Formal State/Tribal AMLR Plan Amendments Other Than Major Amendments

#### 1. General.

a. Paragraph (a) of 30 CFR 884.15 specifies that a state/tribe may submit a proposed plan amendment to the Director at any time and that, if the proposed amendment changes the objectives, scope or major policies of the reclamation plan, the Director must follow the procedures contained in 30 CFR 884.14 to approve or disapprove the amendment or revision.

b. All formal amendments to AMLR plans that do not change the objectives scope or major polices and are mostly editorial in nature must be processed in accordance with this Appendix, those considered major plan amendments must be processed in accordance with Appendix C.

c. We strongly encourage states/tribes to submit proposed amendment language and/or concepts for preliminary review and comment prior to their formal submission, in order to allow us to identify and resolve issues early in the amendment process. See Appendix F for draft language/concept review procedures.

d. We encourage the states/tribes to adopt the following processing guidelines when submitting formal amendments:

(1) If first submitted as draft proposed language and/or concepts, include the material as it will be formally proposed at the state/tribal level or otherwise ensure that an amendment will not be formally adopted or become effective until approved by OSM. See Appendix F.

(2) Transmit plan amendments electronically or, if transmitted in hard copy, include an electronic copy of the amendment and any supplemental material as part of the amendment package.

(3) A complete formal amendment package should contain:

(a) A section-by-section comparison of the state's/tribe's proposed amendment and the Federal regulations in a side-by-side format or, alternatively, citation of the corresponding Federal statutory provision or regulation, if any, and an explanation of the differences.

(b) The entire section or subsection of the state/tribal rule, statute, policy statement or other plan document being amended.

(c) A summary that clearly describes the purpose of the proposed change(s), including identification of any plan conditions or required amendments to be satisfied by the proposal.

(d) The precise identification of existing language being deleted and new language being added, e.g., underlining new language and/or bracketing or striking out language to be deleted.

(e) The identification of the status of the state's/tribe's submission. Formal submissions and draft language/concepts should not be combined.

e. The RD, with the FOD, may return a submission to the state/tribe if the state/tribe deviates from these guidelines in a manner that substantially hinders the review. When such a determination is made, the FOD promptly (within 5 days of receipt) must request in writing that the state/tribe provide the missing material. If the state/tribe does not comply with this request, the RD with the FOD, may review the original submission in accordance with this Appendix.

f. The guidelines contained in Appendix A of this Directive, "Guidelines for Evaluating Proposed State/Tribal Regulatory Programs, AMLR Plans, and Program or Plan Amendments," must be considered when evaluating proposed AMLR plan amendments to see if they meet Federal requirements.

## 2. Procedures and Responsibilities.

### a. Initial Administrative Processing.

(1) Within 2 days of receipt of a formal submission, the FOD must:

(a) Establish the Administrative Record file (and ensure that it is maintained) in accordance with OSM Directive INF-2.

(b) Notify the RD that the proposed amendment is available in FDMS,

(2) Immediately upon receipt, the RD must:

(a) Assign a SATS identification number to the proposed amendment to track processing time.

(b) Enter the appropriate data into the tracking system and update the system throughout the processing of the amendment.

### b. Submission Review.

(1) The RD, with the FOD, must begin reviewing the submission immediately upon receipt.

c. Action Taken After Review.

(1) The RD will prepare a draft final decision document.

(2) The RD will forward a copy of the draft final decision document to the two other RD's for a Consistency review. A designated staff member will check and determine whether his/her region has made any decisions in a final decision document on a similar issue, but decided differently. The two RD's must have their Region's review sent back to the requesting RD within 15 days of receipt of the request.

(3) Final decision document preparation.

(a) A final decision document announces OSM's decision on the proposed amendment. It contains findings describing how and why the proposed amendment is or is not consistent with Federal requirements.

(b) For amendments submitted in response to the requirements of 30 CFR 884.15, OSM may decide to:

(1) Approve the amendment.

(2) Disapprove the amendment.

(c) In preparing a final decision document, the RD must coordinate legal review of the document with the FS. The FS and the FOD surname or otherwise indicate their concurrence with the final decision document.

(d) The RD must prepare a final decision package and sign the final decision document.

(e) Final decision documents concerning state/tribal plan amendments normally are made effective on the date that the final decision document is signed. However, effective dates may be adjusted to coordinate Federal actions with the state/tribal rulemaking process if so requested by the state/tribe.

(f) After the final decision document is signed, the FOD must:

(1) Immediately forward a copy of the signed decision document to the state/tribe.

(2) Review a copy of the amendment as finally adopted by the state/tribe to confirm that, apart from the correction of typographical and similar errors, the regulations or other amendment provisions have been adopted in a form identical to that in which they were approved. The FOD must forward a summary of the review to the RD. The FOD, with the RD, must ensure that the adopted provisions and a summary of the review are entered into the Administrative Record.

(3) Track any required amendments imposed by OSM in the final decision document and provide reminder notices of due dates to the state/tribe as needed.

(g) If, OSM does not approve a proposed amendment provision, the state/tribe may submit a revised proposed amendment provision at any time under the procedures of 30 CFR 884.15(a). If the state/tribe submits its revision within 30 days of OSM's original disapproval, the processing time should be shortened to enable the RD to reach a decision on the submittal within 30 days of receipt. This step applies only to those provisions of the submission that address the disapproval and then only if the state/tribe submits the revised provisions within 30 days of OSM's disapproval.

d. State/Tribal Adoption of Amendment.

(1) Approval of an amendment is conditioned on the state's/tribe's adoption of the amendment in a form identical to that in which it was reviewed, except for the correction of typographical errors. If the state/tribe otherwise modifies the proposed amendment in the adoption process, the modified amendment must be processed in the same manner as a new proposed amendment, and the modifications may not become effective for state/tribal plan purposes until approved by OSM.

(2) If the state/tribe fails to adopt an amendment within a reasonable time following OSM approval or fails to diligently pursue adoption of the amendment, the FOD will consult with the RD as to the proper course of action. Specifically, the FOD may (after consulting with the RD) consider including adoption of the amendment in the state's/tribe's annual performance agreement under Directive AML-22, "Evaluation of State and Tribal Abandoned Mine Land Programs."

(3) If the state/tribe adopts or implements a proposed amendment before OSM approval, and if OSM subsequently disapproves the amendment or a portion thereof, it may be necessary to consider suspension of the reclamation plan, in whole or in part, under 30 CFR 884.16; reduction, suspension or termination of existing AML grants under 30 CFR 886.18; or withdrawal from consideration for approval of all grant applications submitted under 30 CFR 886.15.

(4) If the amendment as adopted is identical to the approved amendment, or differs from it only in the correction of typographical errors, the FOD must forward one copy to the RD.

## APPENDIX F

### **Pre-Submission Assistance with Developing State/Tribal Regulatory Programs, State/Tribal AMLR Plans and Program and Plan Amendments**

#### 1. General.

a. The goal of the pre-submission assistance process (formerly known as the "informal amendment process" or the "informal process") is to provide timely, accurate, and complete assistance to states/tribes with developing rules, statutes and/or policy guidelines that are in accordance with Federal requirements, yet meet the needs of the individual states/tribes. Assistance provided may range from detailed and complete, but informal, reviews of proposed submissions to advice on specific issues or concepts. The RD, with the FOD, will determine review time frames on a case-by-case basis and in coordination with the state/tribe.

b. All requests for pre-submission assistance must be processed in accordance with this Appendix. Tribes are either to transmit material(s) electronically, or to include an electronic copy of the proposal and any supplementary supporting material as part of the submission.

c. The following information should be included in the state/tribal request:

(1) Identification of the submission as a request for pre-submission assistance in developing a program, plan or program or plan changes.

(2) A requested response date which considers the depth and detail of review needed and the state/tribal administrative and rulemaking time frames, so that the RD, with the FOD, can assess workload, determine priorities and coordinate any needed review with FS.

(3) A request for pre-submission assistance should include the following information, as appropriate:

(a) A section-by-section comparison of the proposal and the Federal requirements in a side-by-side format or, alternatively, citation of the corresponding Federal statutory provision or regulation, if any, and an explanation of the differences.

(b) The entire section or subsection of the rule, statute, policy statement or other program or plan document being proposed or amended.

(c) A summary which clearly describes the purpose of the proposed changes, including identification of any conditions of program or plan approval or any required amendments to be satisfied by the proposal.

(d) If the proposal differs from the corresponding Federal provisions, the rationale and, when appropriate, any technical justification and/or statement of legal effect.

(e) The precise identification of existing language being deleted and new language being added, e.g., underline or "redline" new language and bracket or strike-out language to be deleted.

e. The guidelines contained in Appendix A of this Directive, "Guidelines for Evaluating Proposed State/Tribal Regulatory Programs, AMLR Plans, and Program or Plan Amendments," must be considered when evaluating a draft proposal in accordance with this Appendix.

## 2. Procedures and Responsibilities.

a. Within 2 days of receipt of a request for pre-submission assistance, the FOD must forward one copy to the RD.

b. Within 5 days, the RD, with the FOD, must determine review time frames for each request for pre-submission assistance. The RD must determine whether OSM needs to discuss the priority of the document(s), the level of review and/or the requested response date with the state/tribe. If the RD determines that one or more of these items must be clarified or negotiated, the FOD will arrange a telephone conference with the state/tribe.

c. Within the time frames established in subsection 1.a. of this Appendix, the RD, with the FOD, must review the pre-submission document(s) or information to determine its consistency with Federal requirements. If this review is conducted independent of the RD, the FOD will submit all review comments to the RD before the response date requested by the state/tribe.

d. The RD also must coordinate any desired legal reviews with the FS.

e. Within the agreed upon time frame, the RD, with the FOD, must prepare a letter detailing the results of the OSM review. The FOD will sign the letter and send it to the state/tribe.

f. The FOD must promptly furnish a copy of the letter signed in Part 2.e. to the RD.

## APPENDIX G

### Processing of Part 732 Notifications

#### 1. Conditions Leading to Part 732 Notifications.

The Director, under 30 CFR 732.17(e), may require that an approved state/tribal program be amended if any of the following three circumstances exist:

- a. As a result of changes in SMCRA or the Federal regulations, the state/tribal program is no longer in accordance with SMCRA or consistent with the Federal regulations.
- b. Conditions or events change the implementation, administration or enforcement of the state/tribal program.

The SRA/TRA is required to notify OSM promptly of any significant events or proposed changes, such as those listed in 30 CFR 732.17(b), which affect or would affect the implementation, administration or enforcement of the state/tribal program. The FOD will develop a documented process to monitor and obtain copies of legislative and regulatory actions that may impact regulatory program performance. Within 30 days of receipt of the state's/tribe's notification or receipt of copies of state/tribal legislative or regulatory action, the RD, with the FOD, must determine whether the condition, event or change requires a state/tribal program amendment.

- c. Conditions or events indicate that the state/tribal program no longer meets the requirements of SMCRA or the Federal regulations.

Such conditions or events include, but are not limited to, Federal court decisions or oversight studies or evaluations indicating that the approved program is less effective than the Federal requirements. This may occur when, for example:

- (1) The assumptions underlying program approval prove untrue,
- (2) State/tribal agencies or courts subsequently interpret or apply program provisions in a manner unanticipated at the time of program approval, or
- (3) Mining methods and techniques not considered at the time of approval are introduced in the state/on tribal lands.

#### 2. General Requirements.

- a. Whenever OSM determines that the state/tribe must amend its program, the RD must notify the SRA/TRA of this decision in writing.

b. Within 60 days of receipt of a Part 732 notification, the state/tribe must, in accordance with 30 CFR 732.17(f)(1), submit a proposed amendment or a description of an amendment to be proposed and a timetable for enactment. See Appendix I for more guidance on timetables for enactment.

3. Procedures and Responsibilities.

a. State/Tribal Requests for Determinations Under 30 CFR 732.17(b).

(1) Within 5 days of receipt of notification from a state/tribe of significant changes, events or actions, the FOD must forward a copy of this notification to the RD, to the RDs of the other regions and to the AD/PS with a request that the AD/PS and the RDs of the other regions notify the RD if they've had a similar request and provide the RD with the response they sent to the state.

(2) Within 15 days of receipt, the AD/PS and the RDs of the other regions will provide comments, if any, to the RD.

(3) The RD must review the request to determine if a program amendment is needed. The RD also must coordinate any desired legal reviews with the FS.

(4) Within 30 days of receipt of the state/tribal notification, the RD, in consultation with the FOD, must prepare and send to the state/tribe a response detailing OSM's decision on whether the changes or events require a program amendment.

b. Part 732 Notification Letters Resulting from Oversight Reviews.

(1) If the FOD determines through oversight activities that a program amendment is required to correct a problem, he or she must prepare and submit a draft Part 732 notification letter to the RD for approval.

(2) Within 30 days of receipt, the RD must review the letter and supporting documentation for policy concerns, format and style. The RD must coordinate any desired legal reviews with the FS and requests for comments from the AD/PS and the RDs of the other regions.

(3) If the RD determines that the letter should be revised, he or she either must return it to the FOD for reprocessing, or revise it after consultation with the FOD.

(4) At the request of the RD, the AD/PS and the RDs of the other regions will review the letter and supporting material for policy concerns and, within 15 days of receipt, send any comments to the RD.

(5) After all necessary revisions are made; the RD will sign and forward the letter to the state/tribe.

c. Part 732 Notification Letters Resulting from Federal Statutory or Regulatory Revisions.

(1) Promptly following the promulgation of revised Federal regulations or the enactment of amendments to SMCRA, the AD/PS must determine whether any state/tribal regulatory program amendments will be necessary as a result. The AD/PS must coordinate any desired legal reviews with the Office of the Solicitor in Headquarters.

(2) If the AD/PS determines that amendment of state/tribal programs is or may be necessary, he or she will prepare and provide a generic draft Part 732 notification letter and a copy of the determination to the RD.

(3) If amendment of state/tribal programs is determined to be necessary, the RD will prepare state-/tribal-specific Part 732 notification letters, obtain the surname of the appropriate FOD, sign the letters and send them to the states/tribes.

## APPENDIX H

### Processing of Part 884 Notifications

#### 1. Conditions Leading to Part 884 Notifications.

The Director may require that an approved AMLR plan be amended if any of the following three circumstances [see 30 CFR 884.15(b), (c) and (d)] exist:

- a. As a result of changes in SMCRA or the Federal regulations, the AMLR plan no longer meets the requirements of SMCRA or the Federal regulations.
- b. Conditions or events prevent or impede the state/tribe from administering its abandoned mine land reclamation program in accordance with its approved AMLR plan.

In accordance with 30 CFR 884.15(c), the state/tribal AML authority is required to notify OSM of any such impediments. The FOD will develop a documented process to monitor and obtain copies of legislative or other actions that may impact performance of the state/tribal abandoned mine land reclamation program. After notification of the state/tribe or receipt of copies of state/tribal legislative or regulatory action, the RD, with the FOD, must determine whether an AMLR plan amendment is required.

- c. The state is not conducting abandoned mine land reclamation in accordance with the approved AMLR plan.

This may be determined as a result of events such as, but not limited to, Federal court decisions or studies or evaluations indicating that the approved plan no longer meets the Federal requirements. This may occur when, for example:

- (1) The assumptions underlying plan approval prove untrue, or
- (2) State/tribal agencies or courts subsequently interpret or apply plan provisions in a manner unanticipated at the time of plan approval.

#### 2. General Requirements.

- a. Whenever OSM determines that the state/tribe must amend its plan, the RD must notify the state/tribal AML authority of this decision in writing and, after consultation with the state/tribe, establish a reasonable timetable for submitting an amendment to the AMLR plan. See Appendix I for more guidance on timetables for enactment.

- b. If the state/tribe fails to comply with the established timetable or to make reasonable or diligent efforts to comply with the timetable, OSM may suspend the state/tribal AMLR plan, in whole or in part, under 30 CFR 884.16; or reduce, suspend or terminate existing

AML grants under 30 CFR 886.18; or withdraw from consideration for approval all grant applications submitted under 30 CFR 886.15.

3. Procedures and Responsibilities.

a. State/Tribal Requests for Determinations Under 30 CFR 884.15(c).

(1) Within 5 days of receipt of notification from a state/tribe of the conditions, events or actions that may prevent or impede administration of abandoned mine land reclamation in accordance with the approved state/tribal AMLR plan, the FOD must forward a copy of this notification to the RD, to the RDs of the other regions and to the AD/PS with a request that the AD/PS and the RDs of the other regions notify the RD if they've had a similar request and provide the RD with the response they sent to the state.

(2) Within 15 days of receipt, the AD/PS and the RDs of the other regions will provide comments, if any, to the RD.

(3) The RD must review the request to determine if a plan amendment is needed. The RD also must coordinate any desired legal reviews with the FS.

(4) Within 30 days of receipt of the state/tribal notification, the RD, in consultation with the FOD, must prepare and send to the state/tribe a response detailing OSM's decision on whether the changes, events or actions require a plan amendment.

b. Part 884 Notification Letters Resulting from Evaluation Reviews.

(1) If the FOD determines through evaluation activities that a plan amendment is required to correct a problem, he or she must prepare and submit a draft Part 884 notification letter to the RD for approval.

(2) Within 30 days of receipt, the RD must review the letter and supporting documentation for policy concerns, format and style. The RD must coordinate any desired legal reviews with the FS and request comments from the AD/PS and the RDs of the other regions.

(3) If the RD determines that the letter should be revised, he or she either will return it to the FOD for reprocessing, or revise it after consultation with the FOD.

(4) At the request of the RD, the AD/PS and the RDs of the other regions will review the letter and supporting material for policy concerns and, within 15 days of receipt, send any comments to the RD.

(5) After all necessary revisions are made; the RD will sign and forward the letter to the state/tribe.

c. Part 884 Notification Letters Resulting from Federal Statutory or Regulatory Revisions.

(1) Promptly following the promulgation of revised Federal regulations or the enactment of amendments to SMCRA, the AD/PS must determine whether any state/tribal plan amendments will be necessary as a result. The AD/PS must coordinate any desired legal reviews with the Office of the Solicitor in Headquarters.

(2) If the AD/PS determines that amendment of state/tribal plans is or may be necessary, he or she will prepare and provide a generic draft Part 884 notification letter and a copy of the determination to the RD.

(3) If amendment of state/tribal AMLR plans is determined to be necessary, the RD will prepare state-/tribe-specific Part 884 notification letters, obtain the surname of the appropriate FOD, sign the letters and send them to the states/tribes.

## APPENDIX I

### **Processing of State/Tribal Timetables for Amendment Enactment or Changes to an Existing Timetable for Enactment**

#### 1. General Requirements.

##### a. For Regulatory Program Amendments:

(1) The Federal regulations at 30 CFR 732.17(f)(1) specify that the SRA/TRA must, within 60 days after receipt of a Part 732 notification, submit to OSM a proposed written amendment or a description of an amendment to be proposed.

(2) The proposed amendment or description will address the deficiencies identified in the Part 732 notification and must contain a timetable for enactment, which is consistent with established administrative or legislative procedures in the state/for the tribe.

(3) The timetable for enactment must include the date(s) by which a state/tribe intends to submit either proposed formal amendment or a request for pre-submission assistance with developing an amendment to the state's/tribe's regulatory program.

##### b. For AMLR Plan Amendments:

The Federal regulations at 30 CFR 884.15(e) specify that the Director, in consultation with the states/tribes, must establish a reasonable timetable for submission of an amendment, which is consistent with established state/tribal administrative or legislative procedures.

#### 2. Procedures and Responsibilities.

##### a. When the state responds, the FOD, in consultation with the RD, must:

(1) Review any proposed timetable for enactment or change to an existing timetable immediately upon receipt from the state/tribe.

(2) Use the guidelines contained in this Appendix to review the timetable or timetable change.

(3) Either approve or disapprove the proposed timetable or change to an existing timetable within 30 days of receipt by sending a formal letter to the state/tribe.

(4) Provide the RD with a copy of the letter sent to the state/tribe.

(5) Monitor timetable implementation progress and results and provide any required reports to the RD.

b. When the state/tribe does not respond or the FOD is unable to negotiate an acceptable timetable with the state/tribe:

(1) The FOD must:

(a) Prepare a memorandum to the RD describing and prioritizing recommended courses of action, such as imposition of grant conditions, initiation of proceedings under 30 CFR Part 733 or 30 CFR 884.16, if warranted, or other suitable measures.

(b) Implement the Director's decision, with assistance from the RD as necessary.

(c) Monitor implementation progress and results and provide any required reports to the RD.

(2) The RD must:

(a) Evaluate the FOD's recommendations.

(b) Prepare any necessary decision memoranda and a letter to the state/tribe for the Director's signature authorizing action needed to secure an approvable and responsive timetable.

(c) Assist the FOD in implementing the Director's decision.

(3) The Director will sign a letter to the state/tribe authorizing the action needed to secure an approvable and responsive timetable.

### 3. Guidelines for Evaluation of State/Tribal Timetables for Enactment or Changes to an Existing Timetable.

a. As a general rule, the maximum time necessary for a state/tribe to fully adopt required regulatory amendments should reasonably be no greater than the 18 months allowed by SMCRA for a state/tribe to prepare the submission of its entire original program to assume primacy under section 503(a) of SMCRA. The same general rule will apply for states/tribes to fully adopt required AMLR plan amendments.

b. After receipt of a proposed timetable or change to an existing timetable, the FOD, in consultation with the appropriate RD, must consider, at minimum, the following factors in evaluating the proposal:

(1) The state's or tribe's amendment processing procedures.

(2) The constraints imposed by state/tribal administrative and legislative rulemaking requirements or ordinances, schedules and procedures.

(3) The criticality of the amendment and/or portion of the regulatory program or AMLR plan to be amended, including any potential impacts on public health and safety or the environment.

(4) The suitability of promulgation of emergency regulations when the need for regulatory program or AMLR plan amendment is immediate.

(5) The complexity of the amendment's subject matter.

(6) The nature of the change to be made, i.e., does the section of the regulatory program or AMLR plan being amended "stand alone," or will the change (or lack thereof) affect multiple sections of the program or plan.

(7) State/Tribal workload factors.

(8) The possibility of combination with other amendments in related subject areas, which already are scheduled under an approved timetable for enactment.

## APPENDIX J

### Standards for Comparison of State/Tribe Regulatory Programs and Amendments with SMCRA and the Federal Regulations

#### 1. Introductory Information and Exception.

a. SMCRA (also “the Act”) uses more than one term when establishing the standards which state/tribal regulatory programs must meet with respect to various Federal requirements.

b. For considerations to aid in reviewing alternative bonding systems proposed under 30 CFR 800.11(e) and section 509(c) of SMCRA, see Appendix L.

#### 2. Standards of Comparison for State Regulatory Programs.

a. **General Standard:** in accordance with SMCRA and consistent with the Federal regulations.

(1) Section 503(a) of SMCRA provides that a proposed state program must demonstrate that the state can carry out the provisions of the Act and meet its purposes through:

(a) A state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act, and

(b) State regulations consistent with regulations issued by the Secretary pursuant to the Act.

(2) The Federal regulations at 30 CFR 730.5 defines the underlined terms as meaning that the state laws and regulations:

(a) Are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act, and

(b) Are no less effective than the Federal regulations in meeting the requirements of the Act.

(3) The Federal regulations at 30 CFR 732.15(a) further clarify that the state's laws and regulations, *collectively*, must be in accordance with SMCRA and consistent with the Federal regulations. That is, a state's statutes, rules, policy statements and similar materials, *all together*, must compare with the Federal statute and rules, *all together*, to ensure that the state's program, *as a whole*, meets all Federal requirements.

(4) Further, state analogs to Federal statutory provisions need not be located only in state statutes, nor must state analogs to Federal regulatory provisions be located only in state rules. However, if a state wishes to provide a regulatory rather than a statutory counterpart to a Federal statutory provision, the state statute must provide clear authority for the adoption of such regulations.

b. ***Standards for penalty and enforcement provisions:*** no less stringent than and with the same or similar procedural requirements as those in sections 518(i) and 521(d), respectively, of SMCRA.

(1) Specifically, section 518(i) of SMCRA provides that:

As a condition of approval of any state program, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate *penalties* no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto [all emphasis added].

(2) Specifically, section 521(d) of SMCRA provides that:

As a condition of approval of any state program \* \* \*, the enforcement provisions thereof shall, at a minimum, incorporate *sanctions* no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto [all emphasis added].

(3) With respect to both ***civil and criminal penalty and enforcement provisions***, the Federal regulations at 30 CFR 732.15(b) (7) and (b) (8) and 840.13 repeat the statutory requirements.

They also require that state program enforcement provisions be consistent with 30 CFR 843.11 (cessation orders), 843.12 (notices of violation), 843.13 (suspension or revocation of permits) and Subchapters G (permitting) and J (bonding) of 30 CFR Chapter VII, and that state program procedural requirements relative to penalties and sanctions be consistent with 30 CFR Parts 843 and 845 and Subchapters G and J of 30 CFR Chapter VII. Some of these regulations further reference the procedures and sanctions of 43 CFR Part 4.

(4) However, with respect solely to ***civil penalties***, the U.S. District Court for the District of Columbia, in re: Permanent Surface Mining Regulation Litigation (Civil Action 79-1144, February 26, 1980), remanded 30 CFR 732.15(b)(7) and 840.13(a) insofar as they require that state programs include penalty provisions consistent with 30 CFR Part 845. The court ruled that SMCRA requires states to develop penalty systems incorporating the four criteria listed in section 518(a) of the Act (the operator's history of previous violations at the site, the seriousness of the violation, the negligence of the operator, and any good faith shown by the operator in achieving rapid compliance). These systems must result in the imposition of penalties no less stringent than those set forth in the Act. However, penalties need not be assessed in all

cases that they would be under 30 CFR Part 845, nor need penalty amounts be equivalent to those of 30 CFR Part 845.

In response to this ruling, OSM suspended 30 CFR 732.15(b)(7) and 840.13(a) to the extent that they require the state programs to include a point system for assessing civil penalties or that such programs impose civil penalties as stringent as those of 30 CFR 845.15 (45 FR 51548, August 4, 1980). Hence, if the state program requires consideration of the four mandatory statutory criteria when determining whether to assess a penalty and in determining the penalty amount, the program meets these aspects of the requirements of paragraphs (a) and (i) of section 518 of SMCRA, regardless of the amount of penalty actually imposed.

3. Standards of Comparison for tribal Regulatory Programs

a. **General Standard:** in accordance with paragraph 710(j)(1) of SMCRA -

(1) Notwithstanding any other provision of law, an Indian tribe may apply for, and obtain the approval of, a tribal program under section 503 of SMCRA regulating in whole or in part surface coal mining and reclamation operations on reservation land under the jurisdiction of the Indian tribe using the procedures of section 504(e) of SMCRA.

(2) For purposes of this subsection and the implementation and administration of a Tribal program under Title V of SMCRA, any reference to a “state” in SMCRA shall be considered to be a reference to a “tribe.”

(3) The findings required to be made by OSM for approval of the TRP submission will be determined on a case-by-case basis depending upon which elements of the regulatory program the tribe proposes to assume.

b. **Conflicts of Interest:** in accordance with paragraph 710(j) (2) of SMCRA -

(1) In general, the fact that an individual is a member of an Indian tribe does not in itself constitute a violation of section 201(f) of SMCRA.

(2) Any employee of a TRA shall not be eligible for a per capita distribution of any proceeds from coal mining operations conducted on Indian reservation land under SMCRA.

c. **Sovereign Immunity:** in accordance with paragraph 710(j)(3) of SMCRA, in order to receive primary regulatory authority under section 504(e) of SMCRA, an Indian tribe shall waive sovereign immunity for purposes of section 520 and paragraph 710(j)(4) of SMCRA.

d. **Judicial Review:** in accordance with paragraph 710(j) (4) of SMCRA -

(1) For purposes of *civil actions* -

(a) In general, after exhausting all tribal remedies with respect to a civil

action arising under a tribal program approved under section 504(e) of SMCRA, an interested party may file a petition for judicial review of the civil action in the United States circuit court for the circuit in which the surface coal mining operation names in the petition is located.

(b) Scope of review -

(1) The United States circuit court shall review de novo any questions of law under subparagraph 3.d.(1)(a) above.

(2) The United States circuit court shall review findings of fact under subparagraph 3.d. (1) (a) above.

(2) For purposes of *criminal actions* – any criminal action brought under section 518 of SMCRA with respect to surface coal mining or reclamation operations on Indian reservation lands shall be brought in the United States District Court for the District of Columbia, or the United States district court in which the criminal activity is alleged to have occurred.

## APPENDIX K

### Standard for Comparison of State/Tribal AMLR Plans and Amendments with SMCRA and the Federal Regulations

The standard for comparing proposed AMLR plans and amendments with SMCRA and the Federal regulations is much less specific than are the standards applicable to surface mining regulatory programs.

**General Standard:** In accordance with 30 CFR 884.14(a), the proposed plan must meet all applicable requirements of the Federal statute and rules. That is, a state's/tribe's statutes, rules, policy statements, procedures and similar materials must compare, *all together*, with applicable requirements of the Federal statute and rules, to ensure that the state's/tribe's plan, *as a whole*, meets all Federal requirements.

Amendments to AMLR plans must be approved or disapproved in accordance with the procedures set out in 30 CFR 884.14 if the amendment changes the objectives, scope or major policies followed by the state/tribe in the conduct of its reclamation program. Included in this category of amendments are those affecting the AMLR emergency program or removing plan conditions. All other amendments to AMLR plans must be approved or disapproved in accordance with the procedures set out in 30 CFR 884.15.

## APPENDIX L

### Considerations for Reviewing Alternative Bonding Systems

#### 1. Proposed New Alternative Bonding Systems.

a. Statutory and Regulatory Considerations. Section 509(c) of SMCRA allows the Secretary to approve an alternative bonding system (ABS) if it meets the objectives and purposes of the bonding program requirements contained in the other provisions of section 509. To interpret this provision, we adopted 30 CFR 800.11(e), which specifies that any such system must:

(1) Assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and

(2) Provide a substantial economic incentive for the permittee to comply with all reclamation provisions of the permit and regulatory program.

b. Other Considerations. As part of the OSM decision-making process, we should use the considerations listed in the following documents to review each state submission proposing the establishment of an alternative bonding system:

(1) "Alternative Bonding Systems: An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems," dated November, 1990.

(2) National Acid Mine Drainage Policy, dated March 31, 1997.

#### 2. Proposed Revisions to Alternative Bonding Systems.

a. Any proposed revision to an existing approved ABS should not adversely impact the findings made when OSM approved it, or subsequent revisions to it, under the provisions at 30 CFR 800.11(e).

b. Proposed revisions may be approved that do not adversely affect the solvency of the ABS, even though an amendment may not address all existing deficiencies.

## APPENDIX M

### Distribution List for State Regulatory Program and State/Tribal AMLR Plan Submissions and Amendments

#### 1. Distribution.

The RD, with the FOD must:

- a. Distribute all formal submissions to the agencies indicated by an asterisk (\*), except when the agency has otherwise requested, as noted below;
- b. Poll the agencies or offices without an asterisk to determine their interest in receiving and commenting on proposed regulatory programs, AMLR plans or amendments; and
- c. Query agencies on their distribution lists periodically to update names and addresses and determine whether those agencies without an asterisk want to remain on the comment solicitation list.

#### 2. Agency Addresses.

Addresses are provided only for agencies which have centralized all or part of their nationwide amendment review functions. The RD, with the FOD, is responsible for obtaining the appropriate district, regional, area or field office address(es) for all other agencies or agency units listed below that service the state(s) and tribe(s) within the RD's or FOD's area of responsibility.

\*Director, Office of Water  
Enforcement and Permits  
Environmental Protection Agency, EN 336  
401 M Street, S.W.  
Washington, DC 20160

[Note: Send only state  
program and state/tribal  
AMLR plan submissions.]

\*Regional Administrator  
Environmental Protection Agency  
(See Appendix N for addresses)

[Note: Send only state  
program and state/tribal  
AMLR plan amendment submissions]

\*Director, Office of Planning and Review  
Advisory Council on Historic  
Preservation  
1100 Pennsylvania Avenue, N.W.  
Room 803  
Washington, DC 20004

[for Iowa, Minnesota, Missouri,  
and states east of the Mississippi  
River]

-or-

\*Director, Division of Planning and Review

[for states west of the

Advisory Council on Historic Preservation  
12136 W. Bayaud Avenue  
Missouri]

Mississippi River, except Iowa  
Minnesota, and

Room 330  
Lakewood, CO 80228

\*State Historic Preservation Officer

\*Regional Director  
Fish and Wildlife Service  
Department of the Interior

\*Director, Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
Department of Labor  
1100 Wilson Boulevard, 21<sup>st</sup> Floor  
Arlington, VA 22209

\*State Conservationist  
Natural Resources Conservation Service  
Department of Agriculture

Regional Forester  
Forest Service  
Department of Agriculture

U.S. Army Corps of Engineers  
General Engineering Branch (CECW-EP)  
Engineering and Construction Division  
structures.]

[Note: Send only  
amendments concerning  
coal mine waste and impounding

Directorate of Civil Works  
441 G Street, N.W.  
Washington, DC 20314

State Director  
Bureau of Land Management  
Department of the Interior

Chief, Policy and Regulation Branch  
Geologic Resources Division  
National Park Service  
Department of the Interior  
P.O. Box 25287  
Denver, CO 80225-0287

Regional Director  
National Park Service  
Department of the Interior

Assistant Secretary for Environment, Safety and Health  
Department of Energy  
Forrestal Building

1000 Independence Ave., S.W.  
Washington, DC 20585

## APPENDIX N

### Environmental Protection Agency Concurrence Procedures

1. Proposed State/Tribal Programs Submitted Under 30 CFR Part 731.

a. Within 5 days of receipt of a proposed state/tribe regulatory program, the FOD, in coordination with the RD, must provide a copy of the program submission to the Director, Office of Water, Enforcement and Permits (OWEP), Environmental Protection Agency (EPA) in Washington, DC (see Item 2, Appendix M for complete address).

The FOD must request that, within 90 days, EPA either identify any issues concerning air or water quality standards or concur with approval of the proposed program. The letter to EPA must cite those portions of the program that OSM considers relevant to air or water quality standards adopted under the authority of the Clean Air Act or the Clean Water Act. [See 30 CFR 732.13(b) (2).]

b. The FOD, in coordination with the RD, must:

(1) Invite the Director, OWEP, to attend and participate in any public meeting or hearing held on a state/tribal program submission.

(2) Provide the Director, OWEP, with a copy of the meeting summary or hearing transcript.

c. Within 5 days of receipt, the FOD, in coordination with the RD, promptly provides the Director, OWEP, with a copy of any subsequent program modifications submitted by the state/tribe prior to program approval. The letter requests that EPA respond within 15 days or such other length of time as is provided for public comment in the FR document announcing receipt.

d. The RD must forward any concerns that cannot be eliminated through the cooperative efforts of the state/tribe, the FOD, the RD and the Director, OWEP, to the AD/PS for resolution with the Director of EPA's Office of Wastewater Enforcement and Compliance.

e. No state/tribe program may be approved until EPA concurrence is received.

2. Proposed (Formal) State/Tribal Program Amendments Submitted under 30 CFR 732.17.

a. Within 5 days of receipt of a proposed state program amendment (formal submission), the FOD, in coordination with the RD, must provide a copy of the amendment to the Director, Water Management Division (or other office with similar responsibilities), for the EPA region within which the state/tribe is located (see Item 4 of this Appendix for names and addresses of reviewing offices) with a request to provide any comments within 90 days. If the

proposed amendment contains any provisions concerning air or water quality standards adopted under the Clean Air Act or the Clean Water Act, the letter to the EPA must identify those provisions and request concurrence with approval.

b. Within 5 days of receipt, the FOD, in coordination with the RD, must provide the Director, Water Management Division (or similar office), with a copy of any subsequent modifications of the amendment submitted by the state/tribe. The letter must request that EPA respond within 15 days or such other length of time as provided for public comment in the FR document announcing receipt.

c. Any concerns not eliminated through the cooperative efforts of the state/tribe, the FOD, the RD and the Director, Water Management Division (or similar office), are forwarded by the RD to the AD/PS for resolution with the Director of EPA's Office of Wastewater Enforcement and Compliance.

d. In accordance with 30 CFR 732.17(h)(11)(ii), no state/tribal program amendment concerning air or water quality standards adopted under the authority of the Clean Air Act or the Clean Water Act may be approved until EPA concurrence is received. However, when such concurrence is not received in a timely fashion, the remaining provisions of the amendment will be processed without delay.

3. Proposed AMLR Plans or (Formal) AMLR Plan Amendments Submitted Under 30 CFR 884.14 and 884.15, Respectively.

a. Within 15 days of receipt of a proposed state/tribe plan or (formal) plan amendment containing provisions that concern air or water quality standards, the FOD, in coordination with the RD, must prepare and transmit a request for EPA concurrence on the proposed plan.

b. The request must provide a date for EPA to respond and either identify any issues concerning air or water quality standards, or concur with the proposed plan.

4. Addresses of EPA Offices.

Director, Office of Eco-System Protection  
U.S. EPA, Region I  
John F. Kennedy Bldg. (CAA)  
Boston, MA 02203

[New England]

Director, Water Management Division  
U.S. EPA, Region II  
290 Broadway  
New York, New York 10007-1866

[New Jersey, New York]

Director, Water Protection Division  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

[Delaware, Maryland, Pennsylvania,  
Virginia, West Virginia]

Director, Water Management Division  
U.S. EPA, Region IV  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

[Alabama, Florida, Georgia,  
Kentucky, Mississippi, North  
and South Carolina, Tennessee]

Chief, NPDES Support and Technical  
Assistance Branch  
U.S. EPA, Region V  
77 West Jackson Blvd., WN-16J  
Chicago, IL 60604

[Indiana, Illinois, Michigan  
Minnesota, Ohio, Wisconsin]

Director, Water Quality Protection Division  
U.S. EPA, Region VI  
12<sup>th</sup> Floor Suite 1200  
1445 Ross Avenue  
Dallas, TX 75202

[Arkansas, Louisiana, New Mexico,  
Oklahoma, Texas]

Director, Water, Wetlands and Pesticides Division  
U.S. EPA, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

[Iowa, Kansas, Missouri, Nebraska]

Director, Water Management Division  
Mining Waste Branch - 8WQ  
U.S. EPA, Region VIII  
1595 Wynkoop St,  
Denver, CO 80202-2413

[Colorado, Montana, North and  
South Dakota, Utah, Wyoming]

Director, Water Management Division  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

[Arizona, California, Hawaii,  
Nevada]

Director, Water Management Division  
U.S. EPA, Region X  
1200 Sixth Avenue  
Seattle, WA 981010

[Alaska, Idaho, Oregon, Washington]