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U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-5 Transmittal Number: 508 Date: 1/18/89

Subject: Processing of Proposed State Regulatory Programs, Amendments and Part 732 Notifications

Approval: Director **Title:**

1. PURPOSE.

This directive sets forth policy and establishes procedures for:

a. Reviewing and processing proposed State regulatory programs.

b. Reviewing and processing proposed amendments to approved State regulatory programs.

c. Requiring States to amend their programs following revision of Federal statutes or regulations or the identification of programmatic deficiencies or significant programmatic changes.

2. SUMMARY OF CHANGES.

a. General. The directive has been revised to:

(1) Vest primary responsibility for the processing of State program amendments in the Assistant Directors for Field Operations (AD/FO). This includes the preparation of, and signature authority for, most amendment-related final rules.

(2) Reflect the pending decentralization of Solicitor surname authority to the Field Solicitors in Pittsburgh and Denver.

(3) Require that the AD/FO and the FOD conduct joint or parallel rather than consecutive reviews of both formal and informal submittals.

(4) Change the role of the Assistant Director for Program Policy (AD/PP) from review and surname of final rules to review and comment on both formal and informal submittals.

(5) Establish timeframes as guidelines within which agency actions should be completed.

(6) Upgrade the importance attached to reviews of informal submittals and emphasize close working relationships with the States in the preparation of formal submittals.

(7) Modify provisions pertaining to historic preservation to reflect the requirements currently in force in that area.

(8) Update references to OSMRE regulations and directives.

(9) Reorganize procedures for clarity.

b. Definitions. Definitions of formal and informal submittals and required amendment have been added (3.d, 3.e, and 3.h).

c. Part 732 notifications. The directive has been revised to clarify that, consistent with Directive REG-23-1, codified required amendments and State responses to Part 732 notifications shall be considered, monitored and reported as action plans. Also, the directive has been revised to specify that the Federal Register notice imposing a codified required amendment serves as the Part 732 notification and that no separate notice is needed.

d. Distribution list. Appendix 5, the list of agencies from which comments are solicited, has been updated and revised to reflect name changes and agency requests.

3. DEFINITIONS.

a. Amendment. As defined in 30 CFR 732.17(a) and (b), an amendment is any alteration of an approved State program other than nonsubstantive changes or minor revisions having no effect upon the implementation of the program. Except for correction of typographical errors and mistakes of a similar nature, changes to State statutes and regulations must be considered and processed as amendments regardless of their significance.

b. Condition. As defined in 30 CFR 732.13(j), a condition is a requirement imposed upon the State by the Secretary at the time of program approval to correct a minor deficiency within a specified period of time. All final rules concerning conditions must be signed by the Secretary or his designee.

c. Final rule. In the context of 30 CFR Parts 731 and 732 and this directive, except as otherwise noted, a Federal Register notice announcing the Director's or Secretary's decision on a proposed State program or State program amendment. With respect to this directive, all Federal Register notices are considered to be in draft form until signed by the appropriate official.

d. Formal submittal. A proposed amendment submitted by a State to OSMRE for processing under 30 CFR 732.17.

e. Informal submittal. A draft proposed amendment submitted by a State to OSMRE for review and comment prior to formal submission. This term encompasses only those submissions containing the specific language being considered for the amendment; it does not include requests for

comments on general ideas or concepts. Documents pertaining to submission and review of informal submittals shall not be entered into the administrative record.

f. Part 732 notification. A document in which the Director or other designated official notifies the State that its program must be amended to be no less effective than the Federal regulations and no less stringent than SMCRA. Such notification may be necessary as a result of Federal regulation changes, State 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 prior to publication of the final decision on that amendment, i.e, when the final rule imposes a required amendment, the Federal Register notice containing the final rule shall be considered a Part 732 notification.

g. Proposed rule. In the context of 30 CFR Parts 731 and 732 and this directive, except where otherwise noted, a Federal Register notice announcing receipt of a proposed State program, amendment, or subsequent modifications or explanations thereof. With respect to this directive, all Federal Register notices are considered to be in draft form until signed by the appropriate official.

h. Required amendment. As used in this directive, a requirement, imposed by OSMRE in a final rule and codified in 30 CFR 9--.16, that the State amend its program to correct a deficiency identified subsequent to program approval (usually as part of the formal submittal review process) or submit further justification of a provisionally approved rule or other provision. Required amendments may also be imposed by other forms of Part 732 notifications, but they are not generally referenced as such in this directive.

i. State program. A program, established by a State and approved by the Secretary under section 503 of SMCRA and 30 CFR 732.13 to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in accordance with SMCRA and the Federal regulations promulgated pursuant to that statute.

4. POLICY/PROCEDURES.

a. General Policy.

Congress stated in section 101(f) of SMCRA that, because of the diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations should rest with the States. OSMRE's policy is to encourage the formulation of State programs to meet those conditions and to approve variations from the

national regulations if such variations are no less effective than the Federal regulations in meeting the standards of SMCRA.

It is also the policy of OSMRE to encourage and foster informal communication with States prior to formal submittal of State programs or State program amendments. All interactions, oral or written, should lead toward positive resolution of issues so that, to the extent possible, the formal submittal may be processed within the timeframes established in 30 CFR Parts 731 and 732.

b. Responsibilities.

(1) Director (currently delegated to the Deputy Director, Operations and Technical Services (DD/OTS)).

(a) Sign all proposed rules concerning proposed State programs submitted under 30 CFR Part 731.

(b) Sign all proposed and final rules concerning preemption or supersession of State statutory, regulatory or other program provisions.

(c) Prepare decision memoranda for the Secretary of the Interior on final rules pertaining to State programs proposed under 30 CFR Part 731, and review and sign similar memoranda prepared by the AD/FO for final rules pertaining to State program amendments involving conditions of approval.

(d) Sign letters notifying the State regulatory authority of the need for program revisions (Part 732 notifications), except those resulting from State notifications under 30 CFR 732.17(b).

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

(a) Serve as the focal point for reviewing and processing State programs submitted under 30 CFR Part 731, including preparation of all Federal Register notices associated with such submissions.

(b) Review all proposed State program amendments (both formal and informal submittals) for consistency with Federal requirements. Provide comments or other response to the AD/FO by the close of the public comment period or, in the case of informal submittals within 30 days of receipt.

(c) Review all draft Federal Register notices (both proposed and final rules) concerning preemption or supersession of State program provisions.

(d) Prepare all Part 732 notifications resulting from Federal statutory or regulatory changes, and review all other Part 732 notifications to insure consistency with respect to policy concerns.

(e) Ensure that State programs, approved State program amendments and Federal Register notices are entered into COALEX.

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

(a) Evaluate all proposed State program amendments (both formal and informal submittals) for consistency with Federal requirements, ensuring that all necessary analytical and technical resources are provided to complete this review in a timely fashion.

(b) Coordinate any necessary legal reviews of amendment-related issues with the Field Solicitor.

(c) In concert with the Field Office Director, coordinate consultation on formal submittals with the State Historic Preservation Officer (SHPO) or the Advisory Council on Historic Preservation (ACHP, "the Council") when so requested by the SHPO or the Council.

(d) Review all draft proposed rules, Part 732 notifications and responses to proposed amendments (both formal and informal submittals) for accuracy and completeness and for consistency with respect to format and policy concerns.

(e) Sign all proposed rules concerning State program amendments (except those pertaining to preemption and supersession of State provisions).

(f) Prepare and sign all final rules concerning State program amendments, except for final rules pertaining to program conditions codified in 30 CFR 9--.11 or to preemption and supersession of State program provisions. In the former case, the AD/FO shall prepare but not sign the rule and shall also prepare, for the Director's signature, a memorandum recommending that the Secretary sign the notice.

(g) Prepare and sign Part 732 notifications resulting from State notifications under 30 CFR 732.17(b).

(h) Participate in meetings and otherwise communicate with the State as requested by the FOD or as deemed appropriate.

(i) Monitor the status of formal and informal submittals and ensure that the amendment tracking and reporting system is maintained in an accurate and current fashion.

(4) Field Office Director (FOD).

(a) Coordinate initial review procedures for proposed State program amendments (formal submittals) in the following manner:

1. Solicit comments from the AD/PP, the SHPO and appropriate Federal agencies (see Appendix 5).

2. Request and obtain EPA concurrence if the amendment concerns air or water quality standards or their applicability (see Appendix 6).

3. Prepare all proposed rules announcing the receipt of the proposed amendment, reopening or extension of the public comment period, or other procedural action, as appropriate.

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

5. At the discretion of the AD/FO, evaluate the proposed amendment jointly with the AD/FO to determine whether it is consistent with Federal requirements.

(b) In accordance with Directive INF-2, establish and maintain the administrative record file for each formally proposed amendment and provide appropriately numbered copies of all documents to the AD/FO, the Administrative Record Office in Headquarters, and the State office maintaining the State copy of the administrative record.

(c) Meet and otherwise communicate with the State and other parties to discuss programmatic issues and amendments.

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

(e) As part of the oversight process, identify issues which require State program amendments for resolution and draft any resultant Part 732 notifications for AD/FO review and the Director's signature.

(f) Track all conditions of approval, required amendments and Part 732 notifications, and provide the State with reminder notices of due dates.

(g) Obtain a copy of the amendment as finally promulgated by the State following approval by OSMRE, compare with the version approved by OSMRE, and provide the AD/FO and the AD/PP with a copy of both the promulgated amendment and the findings of this comparison.

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

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

(j) Assist the AD/PP in the review of State program submissions and in evaluating State program amendment needs following revision of Federal statutes and regulations.

(k) At the discretion of the AD/FO, evaluate informal submittals of potential State program amendments jointly with the AD/FO.

(l) On an ongoing basis, access COALEX to determine if State program information is accurate and up-to-date.

(5) Regulatory Development and Issues Management (RDIM).

(a) Coordinate and track the flow of documents and correspondence.

(b) Provide the Public Affairs Officer with a copy of all draft Federal Register notices for preparation of a news release or news release waiver prior to forwarding the notice package to the Office of the Federal Register.

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

(6) Public Affairs Officer.

Prepare news releases and news release waivers concerning State programs and State program amendments as appropriate.

(7) Congressional Liaison Officer.

(a) Obtain and distribute information pertaining to Congressional actions affecting State programs.

(b) Notify the State Congressional delegation of the Secretary's actions concerning proposed State programs submitted under 30 CFR Part 731.

c. Procedures.

Procedures and related requirements for the processing of proposed State programs, State program amendments (both formal and informal submittals) and Part 732 notifications are located in Appendixes 1, 2 and 3 respectively.

d. Timeframes.

All timeframes within this directive shall be calculated in accordance with 30 CFR 700.15, which requires the use of calendar days for prescribed time periods of seven or more days.

5. REPORTING REQUIREMENTS. None.

6. REFERENCES.

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

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

c. OSMRE Directive REG-23, "Development and Implementation of Action Plans," Transmittal Number 436, April 15, 1988.

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

7. EFFECT ON OTHER DOCUMENTS.

Supersedes OSMRE Directive REG-5, "Review of State Regulatory Programs and Evaluation and Processing of Proposed State Programs and State Program Amendments," Transmittal Number 324, April 1, 1987.

8. EFFECTIVE DATE. Upon issuance.

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

10. KEYWORDS.

Amendment, State program, Part 732 notification, Part 732 letter, action plan, oversight.

11. LIST OF APPENDIXES.

Appendix 1	Processing of Proposed State Programs
Appendix 2	Processing of Proposed State Program Amendments
Appendix 3	Processing of Part 732 Notifications
Appendix 4	Standards for Comparison of State Regulatory Programs and Amendments with SMCRA and the Federal Regulations
Appendix 5	Distribution List for State Program Submissions and State Program Amendments
Appendix 6	Environmental Protection Agency Concurrence Procedures

APPENDIX 1

Processing of Proposed State Programs

1. Evaluation guidelines.

In evaluating proposed State programs to determine whether they are in accordance with Federal requirements, the following materials shall be considered:

a. SMCRA and the Federal regulations promulgated pursuant thereto.

b. Preambles to proposed, final and superseded Federal rules.

c. Explanations provided by the State.

d. OSMRE policy statements and directives.

e. Comments received from both internal and external reviewers.

f. Legal and technical reference materials.

g. Actions taken concerning other State programs.

h. Other relevant available information.

Further guidance concerning the standards of comparison and the proper terminology for use in correspondence and Federal Register notices can be found in Appendix 4.

2. Detailed procedures.

a. Within five days of receipt of a proposed State program, the FOD shall forward two copies of the submission to the AD/FO, requesting a technical evaluation, and 10 copies to the AD/PP. The FOD simultaneously shall establish (and subsequently maintain) the administrative record file in accordance with OSMRE Directive INF-2, and request that the Public Affairs Officer prepare a news release announcing the submission.

b. Upon receipt from the FOD, the AD/PP shall forward one copy to the Office of the Solicitor with a request for comments.

c. In consultation with the FOD and the AD/FO, the AD/PP shall prepare the Federal Register notice announcing receipt of the submission, inviting public comment on its adequacy, and identifying the time and place of the public hearing (which may be held no sooner than 40 days following the date of publication in the Federal Register). The notice

shall be drafted in accordance with the content requirements of 30 CFR 732.11(a) and the format requirements of the "Federal Register Document Drafting Handbook."

d. The AD/PP shall forward the notice to RDIM to obtain all necessary surnames and the signature of the DD/OTS before forwarding for publication in the Federal Register.

e. The FOD, in consultation with the AD/PP, shall prepare:

(1) Transmittal letters to the agencies listed in Appendix 5, including requests for EPA concurrence in the approval of any provisions relating to air or water quality standards or their applicability (see Appendix 6) and a U.S. Fish and Wildlife Service determination under Section 7 of the Endangered Species Act. When sending these letters, the FOD shall enclose a copy of the program submission.

(2) Letters to the State Governor and the proposed regulatory authority acknowledging receipt of the submission.

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

f. Within 30 days of the close of the comment period, the FOD shall provide the AD/FO and the AD/PP with one copy of all comments received, the transcript of the public hearing, and any other documents relevant to the submission.

g. In consultation with the FOD and the AD/FO, the AD/PP shall review the proposed submission in the manner specified in 30 CFR 732.11(d) and 732.13 to determine whether it meets the requirements of 30 CFR 731.14.

The AD/PP shall also:

(1) Prepare all documents needed in the decision process for the Director and the Secretary, including option papers, correspondence and Federal Register notices.

(2) Through the FOD, obtain State concurrence in any conditions of approval.

(3) Forward the notice to RDIM for appropriate surnames and signatures.

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

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

h. The Congressional Liaison Officer shall notify the State's Congressional delegation of the Secretary's decision prior to its publication in the Federal Register.

i. The FOD shall notify the State regulatory authority of the date of publication of the Secretary's decision in the Federal Register, provide the State with a copy of the notice, and track any conditions of approval, providing reminder notices of due dates as necessary.

j. The AD/PP shall enter the program and related documents into COALEX.

APPENDIX 2

Processing of Proposed State Program Amendments

1. Submission guidelines.

To expedite the processing of formal submittals, States shall be encouraged to informally submit potential amendments for preliminary review and comment prior to their formal submission. To further facilitate processing, the FOD shall encourage the State to include the following elements in each submittal (both formal and informal):

a. Citation of the State rule, statute, policy statement or other document being amended.

b. Citation of the corresponding Federal statute or regulation, if any.

c. The entire section or subsection of the State rule, statute, policy statement or other document being amended.

d. Identification of any conditions of program approval, required amendments, or Part 732 notifications to be satisfied by the proposal.

e. An explanation of the rationale for the changes.

f. Precise identification of the existing language being deleted and the new language being added, e.g., underlining to highlight new language and "strike over" to identify deleted language.

g. Identification of the submittal as either formal or informal. Formal and informal submittals shall not be combined in the same submission.

2. Processing of formal submittals.

a. General requirements and narrative description of procedures.

(1) Public comment solicitation.

The Federal regulations at 30 CFR 732.17(h)(1) specify that OSMRE shall publish a notice of receipt (proposed rule) in the Federal Register within 10 days following receipt of a formally proposed amendment. The notice shall establish a minimum public comment period of 30 days, although a 15-day public comment period may be provided where an amendment is analogous to changes in SMCRA or the Federal regulations, provided the full text of the amendment is published in the Federal Register.

(2) Agency comment solicitation.

The FOD shall forward a copy of the proposed amendment to other Federal agencies and the AD/PP for review and comment. If the amendment affects air or water quality standards (effluent and emission limitations) or their applicability, the FOD shall request the concurrence of the Environmental Protection Agency (EPA). Appendixes 5 and 6 and Part 2.b. of this appendix provide addresses and further instructions concerning comment solicitation and concurrence procedures.

In addition, under 30 CFR 732.17(h)(4) a copy of the amendment must be provided to the SHPO and the ACHP for comment. In accordance with 36 CFR Part 800, no final rulemaking action on any submittal concerning historic or cultural resources shall be taken until a response is received or 60 days have elapsed, whichever occurs first. However, submittal review and processing shall not be otherwise delayed pending comment receipt. If the SHPO or the ACHP requests consultation on a proposed amendment, no final rule may be published until this consultation has occurred. OSMRE is not obligated to adopt the SHPO's or the Council's recommendations where it finds them to be inappropriate, but, when so requested, it is required to consult with the SHPO or the Council on possible mitigation measures before taking final action.

(3) Submittal review.

The AD/PP, AD/FO and FOD shall begin reviewing the submittal immediately following receipt. The AD/PP and the FOD shall forward their comments to the AD/FO by the close of the comment period. Within 10 days of the close of the comment period, the AD/FO shall complete an analysis of the submittal and the comments received, and, if problems are identified, orally contact the State through the FOD to determine whether it prefers to address these problems before or after publication of the final rule. As specified in 30 CFR 732.17(h)(7), to the extent possible, the AD/FO shall analyze all comments received and complete preparation of either a letter to the"State (if problems are identified and the State wishes to correct them before publication of a final rule) or a final rule within 30 days following the close of the comment period.

The AD/FO is encouraged to formulate a review team, which should include one or more Field Office representatives and, as needed, members of technical and professional disciplines, to analyze the submittal and prepare the letter or final rule. The AD/FO archeologist/historian shall be a member of teams reviewing submittals that contain provisions concerning cultural and historic resources. All work of the team shall be supervised by the AD/FO through the team leader. As noted above, the FOD may provide other input for team consideration by submitting formal comments during the public comment period.

If the State provides additional material in response to OSMRE's concerns, a Federal Register notice reopening the comment period

(normally for 15 days unless the new material is unusually voluminous or highly complex, in which case a longer period may be provided) shall be published and the additional material circulated to the agencies listed in Appendix 5 for review.

In evaluating submittals to determine whether they are in accordance with Federal requirements, the following materials shall be considered:

a. SMCRA and the Federal regulations promulgated pursuant thereto.

b. Preambles to proposed, final and superseded Federal rules concerning the topic under consideration.

c. Explanations provided by the State.

d. OSMRE policy statements and directives.

e. Comments received from both internal and external reviewers.

f. Legal and technical reference materials.

g. Actions taken concerning similar proposed changes to other State programs.

h. Other relevant available information.

Further guidance concerning the standards of comparison and the proper terminology for use in correspondence and Federal Register notices can be found in Appendix 4.

(4) Final rule.

The final rule announces the Director'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 an analytical discussion of their disposition.

Depending on the circumstances, the Director may decide to:

(a) Approve the amendment.

(b) Disapprove the amendment.

(c) Where the State's proposal is incomplete, i.e., where 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 being made the subject of a required program amendment.

(d) In circumstances where a court decision prevents approval of the amendment but where the issue of concern is under appeal on behalf of the Secretary, defer a decision. A deferral has the same effect as a disapproval except that, if OSMRE later decides to approve the amendment on the basis of a favorable court decision, no resubmission by the State is necessary, nor is any reopening of the comment period required if the remanded Federal regulation is reinstated without change. Particularly controversial provisions of complex amendments may also be deferred to facilitate approval or disapproval of the remaining provisions. Deferrals should be avoided wherever possible (their use is optional, not mandatory, in the situations outlined above) because of the program implementation difficulties and indefinite tracking requirements they create.

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

(5) Effective date.

Final rules concerning State program amendments shall normally be made effective on the date the rule is published in the Federal Register. However, effective dates shall be adjusted to coordinate Federal actions with the State rulemaking process if so requested by the State.

Paragraph (g) of 30 CFR 732.17 specifies that no change to a State law, regulation or other program component shall take effect for State program purposes until approved by the Director. This includes organizational changes, even if intended to be nonsubstantive. States shall be encouraged to submit amendments in proposed form or otherwise ensure that the amendment will not be formally promulgated or become effective until approved by OSMRE.

Approval of an amendment is conditioned on the State's promulgation of the amendment in a form identical to that in which it was reviewed, except for correction of typographical errors and mistakes of a similar nature. If the State otherwise modifies the proposed amendment in the promulgation process, the modified amendment must be processed in the same manner as a new proposed amendment, and the modifications will not become effective for State program purposes until approved by OSMRE. If the State fails to promulgate an amendment within a reasonable time following OSMRE approval, the FOD shall pursue resolution in accordance with Directive REG-23, "Development and Implementation of Action Plans." If this process fails, the FOD shall consult with the AD/FO to determine

the appropriate action. If higher-level resolution efforts fail, this mayinclude preemption and supersession under 30 CFR 730.11 or notification under 30 CFR Part 733.

If the State promulgates or implements a proposed amendment prior to OSMRE approval, and if OSMRE subsequently disapproves the amendment or a portion thereof, it may be necessary to formally set aside the disapproved provisions by preempting and superseding them in accordance with the provisions and procedures of 30 CFR 730.11. However, preemption and supersession is not a routine or automatic occurrence. When a State implements or continues to implement disapproved provisions, the FOD shall consult with the AD/FO and the AD/PP concerning the proper course of action.

b. Detailed procedures.

Note: If, within 30 days of OSMRE disapproval of a proposed amendment provision, the State submits a revised proposal to address the disapproval, the timeframes in Steps (1) - (10) below shall be shortened to enable the AD/FO to reach a decision on the submittal within 30 days of receipt in accordance with the provisions of 30 CFR 732.17(h)(8) and (9). The proposed rule shall provide a 15-day rather than a 30-day comment period. This note applies only to the specific provisions addressing the disapproval and then only if the State submits them within 30 days of the disapproval.

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

(a) Establish (and subsequently maintain) the administrative record file in accordance with OSMRE Directive INF-2.

(b) Distribute one copy of the amendment to the agencies listed in Appendix 5 and solicit their comments. The time allowed for comment shall be no shorter than that provided for public comment. The letters sent to the SHPO and the ACHP shall include a sentence stating that, unless comments are received to the contrary, OSMRE will proceed as if a determination of no effect is in place with respect to the consultation requirements of 36 CFR Part 800.

(c) Where the amendment concerns air or water quality standards or their applicability, request the concurrence of the EPA in accordance with Appendix 6.

(d) Prepare and forward to the AD/FO a draft proposed rule announcing receipt of the proposed amendment, following the general format guidelines of the "Federal Register Document Drafting Handbook" and the content requirements of 30 CFR 732.17(h)(2),(3) and (5).

(e) Forward one copy of the proposed amendment to the AD/PP for review and comment.

(f) Forward one copy of the proposed amendment to the AD/FO.

(g) Either in concert with or independent of the AD/FO, initiate a review of the amendment to determine its substantive adequacy, providing any comments to the AD/FO by the close of the public comment period.

(2) Promptly following receipt of a copy of the formal submittal from the FOD, the AD/FO shall initiate a review of the proposed amendment, either in concert with or independant of the FOD review. If the AD/FO determines that the submittal involves matters requiring legal expertise, a concurrent legal review of these specific issues shall be requested from the Field Solicitor.

(3) The AD/FO shall review and, as needed, correct the draft proposed rule prepared in Step (1)(d), and sign and forward it to RDIM for publication in the Federal Register. To the extent possible, this action shall be completed within a timeframe that allows publication of the proposed rule within 10 days of receipt of the amendment. In establishing interim timeframes, the AD/FO shall take into consideration that the Office of Federal Register does not publish a document until three working days after receipt.

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

(5) Immediately upon publication of the proposed rule in the Federal Register, the FOD shall send one copy of the notice to the State regulatory authority.

(6) No sooner than five days before the close of the public comment period announced in the Federal Register (but no later than the close of the comment period), the FOD shall hold a public hearing if two or more persons request an opportunity to testify. If only one person submits such a request, a public meeting shall be held instead. No hearing or meeting need be held where no one requests an opportunity to testify. Hearings shall be conducted in accordance with the requirements of 30 CFR 732.17(h)(5). Verbatim transcripts of hearings and minutes or other summaries of meetings shall be kept and entered in the administrative record.

(7) If the SHPO or the ACHP requests consultation on any amendment provisions that may affect historic interests, the FOD shall immediately notify the AD/FO even if Step (9) has already been completed. The AD/FO, in concert with the FOD, shall then arrange any necessary meeting with the SHPO or the Council.

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

(9) Within 10 days following the close of the public comment period, the AD/FO shall analyze all comments received, including those from the FOD and the AD/PP. If this analysis or the evaluation initiated in Step (2) discloses any apparent deficiencies, the AD/FO, through the FOD, shall orally contact the State to determine whether the State prefers to address these deficiencies before or after publication of the final rule. The FOD shall document this response in a conversation record and enter it into the administrative record. Based on this response, the AD/FO shall then prepare, within 20 days of the close of the comment period, either a final rule or a letter to the State outlining the areas in which the amendment appears to be inconsistent with Federal requirements and the nature of these deficiencies. If the State does not indicate a preference or fails to respond immediately, the AD/FO shall proceed with preparation of a final rule unless and until such time as the State indicates otherwise. If a letter is prepared, it shall provide the State an opportunity to meet with OSMRE to discuss the issues. It shall also request that the State submit any revised rules or other materials or rebuttals within 30 days of receipt.

(10) If a final rule is prepared in Step (9), the AD/FO shall coordinate legal review of the rule with the Field Solicitor. The AD/FO shall then sign the rule unless it involves a condition of program approval, in which case the AD/FO, in lieu of signature, shall prepare a memorandum from the Director to the Secretary recommending Secretarial signature and forward the rule package to RDIM.

If a letter is prepared in Step (9), the AD/FO shall forward it to the FOD for signature and delivery to the State. The FOD shall furnish a copy of the signed letter to the AD/FO.

To the extent possible, the AD/FO and the FOD shall complete these actions within 30 days of the close of the last public comment period.

(11) If the proposed amendment concerns a condition of program approval, RDIM shall forward the final rule and accompanying documents through the Director to the Assistant Secretary for Land and Minerals Management (ASLMM) for signature.

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

(13) Immediately upon publication of the final rule, the FOD shall forward one copy to the State regulatory authority.

(14) After publication of the final rule in the Federal Register, the FOD shall acquire a copy of the amendment as finally promulgated by the State and review it to confirm that, apart from the correction of typographical and similar errors, the regulations or other amendment provisions have been promulgated in a form identical to that in which they were approved. The FOD shall forward a summary of the review to the AD/FO and the AD/PP.

If the promulgated regulations are identical to the approved regulations or differ from them only in the correction of typographical errors, the FOD shall forward one copy to the AD/PP to update the COALEX file. The FOD shall also forward one copy to the AD/FO.

If the promulgated regulations contain substantive differences from the approved version, the FOD shall process the modifications as a new proposed amendment (formal submittal), repeating Steps (1)-(17) of this section as necessary.

(15) The AD/PP shall enter the amendment language and pertinent Federal Register notices into COALEX.

(16) The FOD shall track any required amendments imposed by OSMRE in the final rule and provide reminder notices of due dates to the State as needed.

(17) If the State submits additional arguments or materials in response to the letter sent in Step (10), the FOD, within five days of receipt, shall distribute them in accordance with Steps (1)(b) through (1)(f) of this section and prepare and forward to the AD/FO a draft proposed rule announcing receipt of the additional materials and reopening the comment period for 15 days. All parties shall then proceed as in Steps (1)(g)-(4) and (6)-(17). Exceptions to this requirement for reopening the comment period shall be made only for State responses which contain no new information or which merely identify errors and omissions in OSMRE's initial analysis.

3. Processing of informal submittals.

a. Procedures.

Direct communication with all parties involved in each of the following steps is strongly encouraged. The purpose of the informal process is to resolve differences expeditiously prior to preparation of the formal submittal, thus expediting the review and processing of that submittal.

(1) Within five days of receipt of an informal submittal, the FOD shall forward one copy to both the AD/PP and the AD/FO and shall initiate a review to determine its consistency with Federal requirements. If this review is conducted independent of the AD/FO, the FOD shall submit all review comments to the AD/FO within 30 days of receipt of the submittal.

(2) Upon receipt of the informal submittal from the FOD, the AD/FO shall review it for consistency with Federal requirements, preferably through the team approach discussed in Part 2.a.(3) of this appendix. The AD/FO shall also coordinate any desired legal reviews with the Field Solicitor.

(3) The AD/PP shall review the submittal for policy concerns and, within 30 days of receipt, provide comments or other appropriate response to the AD/FO.

(4) Within 60 days of receipt of the submittal, the AD/FO shall prepare a letter detailing the results of the OSMRE review and shall forward this letter to the FOD for signature and delivery to the State.

(5) The FOD shall promptly furnish a copy of the letter signed in Step (4) to the AD/FO.

b. Evaluation guidelines.

In evaluating submittals to determine whether they are in accordance with Federal requirements, the following materials shall be considered:

(1) SMCRA and the Federal regulations promulgated pursuant thereto.

(2) Preambles to proposed, final and superseded Federal rules concerning the topic under consideration.

(3) Explanations provided by the State.

(4) OSMRE policy statements and directives.

(5) Comments received from both internal and external reviewers.

(6) Legal and technical reference materials.

(7) Actions taken concerning similar proposed changes to other State programs.

(8) Other relevant available information.

Further guidance concerning the standards of comparison and the proper terminology for use in correspondence and Federal Register notices can be found in Appendix 4.

APPENDIX 3

Processing of Part 732 Notifications

1. Conditions leading to Part 732 notifications.

If any of the following three circumstances exist, the Director, under 30 CFR 732.17(e), may require that an approved State program be amended:

a. As a result of changes in SMCRA or the Federal regulations, the State program is no longer consistent with SMCRA and the Federal regulations.

b. Conditions or events, such as those listed in 30 CFR 732.17(b), change the implementation, administration or enforcement of the State program. The State regulatory authority is required to promptly notify OSMRE 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 program. OSMRE is required, within 30 days of the State's notification, to determine if the condition, event or change requires a State program amendment.

c. Conditions or events indicate that the State 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 in fact, less effective than the Federal requirements. This may occur because the assumptions underlying program approval prove untrue, State agencies or courts subsequently interpret or apply program provisions in a manner unanticipated at the time of program approval, or mining methods and techniques not considered at the time of approval are introduced to the State. Where Federal regulations have not been changed or affected by court decisions, OSMRE has the responsibility of demonstrating that the State program no longer meets the requirements for approval.

2. General requirements.

Whenever, for any of the reasons listed above, OSMRE determines that the State must amend its program, the Director shall notify the State regulatory authority of this decision in writing. Within 60 days of receipt of this Part 732 notification, the State 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. This State response, if deemed acceptable, shall be considered an action plan and the FOD shall monitor and report on its implementation in accordance with Directive REG-23.

3. Detailed procedures.

a. State requests for determinations under 30 CFR 732.17(b).

(1) Within five days of receipt of notification from a State of significant changes or events, the FOD shall forward one copy of such notification to the AD/FO and the AD/PP with a request for comments from the latter.

(2) Within 15 days of receipt, the AD/PP shall provide comments, if any, to the AD/FO.

(3) The AD/FO shall review the request to determine if a program amendment is needed. The AD/FO shall also coordinate any desired legal reviews with the Field Solicitor.

(4) Within 30 days of receipt of the State notification, the AD/FO, in consultation with the FOD, shall prepare and send to the State a response detailing OSMRE's decision as to whether the changes or events require a program amendment.

b. 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 shall prepare and submit a draft Part 732 notification letter to the AD/FO for approval.

(2) Within 30 days of receipt, the AD/FO shall review the letter and supporting documentation for policy concerns, format and style. The AD/FO shall coordinate any desired legal reviews with the Field Solicitor and may request comments from the AD/PP.

(3) If the AD/FO approves the letter, it and all supporting documentation shall be forwarded to the AD/PP for review. If the AD/FO determines that the letter needs revision, he or she shall either return it to the FOD for reprocessing or revise it after consultation with the FOD.

(4) The AD/PP shall review the letter and supporting material for policy concerns and, within 30 days of receipt, notify the AD/FO of his or her decision.

(5) If the AD/PP approves the letter, he or she shall forward it to the DD/OTS for signature. If the AD/PP disapproves the letter or determines that revisions are necessary, he or she shall return it to the FOD through the AD/FO for disposition or reprocessing as necessary, or make the needed changes after consultation with the FOD and the AD/FO.

(6) Following signature, the DD/OTS shall forward the letter to RDIM for distribution.

c. 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/PP shall determine whether any State program amendments will be necessary as a result. The AD/PP shall coordinate any desired legal reviews with the Office of the Solicitor.

(2) The AD/PP shall provide a copy of this determination, together with a draft Part 732 notification letter if any amendments are deemed necessary, to the AD/FO and the FOD for comment.

(3) Following receipt of comments from the AD/FO and the FOD, the AD/PP shall revise the draft Part 732 notification letter, if necessary, and return it to the FOD. Upon receipt, the FOD shall immediately forward it to the State for a preliminary 30-day comment period.

(4) Following receipt of comments from the State, if any, the AD/PP shall prepare the final Part 732 notification letter and forward it to the DD/OTS for signature.

(5) Following signature, the DD/OTS shall forward the letter to RDIM for distribution.

APPENDIX 4

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

The Surface Mining Control and Reclamation Act (SMCRA or "the Act") uses several terms when establishing the standards which State regulatory programs must meet with respect to various Federal requirements. Specifically, Section 503 (a) of the Act 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 State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act and through State regulations consistent with regulations issued by the Secretary pursuant to the Act. The underlined terms are defined in the Federal regulations at 30 CFR 730.5 as meaning that (a) with regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act, and (b) with regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of the Act.

This language has been further interpreted in 30 CFR 732.15(a) as requiring that the State's laws and regulations, collectively, be in accordance with SMCRA and consistent with the Federal regulations. That is, one compares a State's statutes, rules, policy statements and similar materials, collectively, with the Federal statute and rules, collectively, to ensure that the State's program, as a whole, meets all Federal requirements. State analogs to Federal statutory provisions need not be located only in State statutes, and State analogs to Federal regulatory provisions need not 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 promulgation of such regulations.

SMCRA establishes somewhat different standards of comparison for penalty and enforcement provisions. Section 518(i) 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 [emphasis added].

Section 521(d) 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 [emphasis added].

With respect to 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.

However, with respect to civil penalties, the U.S. District Court for the District of Columbia, in 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 that States 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 where 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, OSMRE suspended 30 CFR 732.15(b)(7) and 840.13(a) to the extent that they require that State programs 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 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.

APPENDIX 5

Distribution List for State Program Submissions and State Program Amendments

All Field Offices must distribute all formal submittals to the listed agencies denoted by an asterisk (*), except where the agency has otherwise requested as noted on the list. Field Offices shall poll the other agencies or offices listed to determine their interest in receiving and commenting on proposed State program amendments. Field Offices should also periodically query agencies on their distribution lists to update names and addresses and, for those agencies not denoted by an asterisk, to ascertain whether they wish to remain on the comment solicitation list.

Addresses are provided only where an agency has centralized all or part of its amendment review functions in one location nationwide. The FOD is responsible for obtaining addresses of the appropriate district, regional, area or field offices of the other agencies or agency units listed below with respect to the State(s) within his or her area of responsibility.

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

* Regional Administrator
Environmental Protection Agency
(See Appendix 6 for addresses.)

* Executive Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, N.W.
Room 809
Washington, D.C. 20004

(Iowa, Minnesota, Missouri, and States east of the Mississippi River)

-or-

Executive Director
Advisory Council on Historic Preservation
730 Simms Street
Room 450
Golden, CO 80401

(States west of the Mississippi River, except Iowa, Minnesota and Missouri)

* State Historic Preservation Officer

* Regional Director
Fish and Wildlife Service
Department of the Interior

* District Manager
Mine Safety and Health Administration
Department of Labor

* State Conservationist
Soil Conservation Service
Department of Agriculture

Regional Forester
Forest Service
Department of Agriculture

Chief of Engineers
U.S. Army Corps of Engineers
CDRUSACE DAEN-ASM-MM)
Washington, D.C. 20314

[Note: Send only amendments concerning coal mine waste impounding structures.]

State Director
Bureau of Land Management
Department of the Interior

Chief, Division of Mining Technology
Bureau of Mines
Department of the Interior
2401 E Street, N.W.
Washington, D.C. 20241

Chief, Energy, Mining and Minerals
National Park Service
Department of the Interior
P.O. Box 25287
Denver, CO 80225

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, D.C. 20585

APPENDIX 6

Environmental Protection Agency Concurrence Procedures

1. Proposed State programs submitted under 30 CFR Part 731.

a. Within five days of receipt of a proposed State program, the FOD shall provide one copy to the Regional Administrator of the EPA Region within which the State is located and one copy to the Director of EPA's Office of Water Enforcement and Permits (see Part 3 for addresses), with a request to, within 90 days, either identify any issues concerning air or water quality standards or concur with approval of the proposed program. The FOD's letter to EPA shall cite those portions of the program that OSMRE considers to be relevant to air or water quality standards promulgated under the authority of the Clean Air Act or the Federal Water Pollution Control Act. See 30 CFR 732.13(b)(2).

b. The FOD shall extend an invitation to the EPA Regional Administrator to attend and participate in any public meeting or hearing held on a State program submission. The FOD shall also provide the Regional Administrator with a copy of the meeting summary or hearing transcript.

c. Within five days of receipt, the FOD shall promptly provide both the Director of the Office of Water Enforcement and Permits and the Regional Administrator of EPA with a copy of any subsequent program modifications submitted by the State prior to program approval. The letter shall request that EPA respond within 15 days or such other length of time as provided for public comment in the Federal Register notice announcing receipt.

d. Any concerns that cannot be eliminated through the cooperative efforts of the State, the FOD, the AD/FO and the EPA Regional Administrator shall be forwarded to the AD/PP for resolution with the Director of EPA's Office of Water Enforcement and Permits.

e. No State program shall be approved until EPA concurrence is received.

2. Proposed State program amendments (formal submittals).

a. Within five days of receipt of a proposed State program amendment (formal submittal), the FOD shall provide one copy to the Director of EPA's Office of Water Enforcement and Permits and one copy to the Regional Administrator of the EPA Region within which the State is located (see Part 3 for addresses) with a request to provide any comments

within 30 days. If the proposed amendment contains any provisions concerning air or water quality standards promulgated under the Clean Air Act or the Federal Water Pollution Control Act, the latter to the EPA shall identify those provisions and request concurrence with their approval.

b. Within five days of receipt, the FOD shall provide both the Director of EPA's Office of Water Enforcement and Permits and the Regional Administrator of the EPA Region within which the State is located with a copy of any subsequent modifications of the amendment submitted by the State. The letter shall request that EPA respond within 15 days or such other length of time as provided for public comment in the Federal Register notice announcing receipt.

c. Any concerns not eliminated through the cooperative efforts of the State, the FOD, the AD/FO and the EPA Regional Administrator shall be forwarded to the AD/PP for resolution with the Director of EPA's Office of Water Enforcement and Permits.

d. In accordance with 30 CFR 732.17(h)(11)(ii), no State program amendment concerning air or water quality standards promulgated under the authority of the Clean Air Act or the Federal Water Pollution Control Act shall be approved until EPA concurrence is received. However, where such concurrence is not received in a timely fashion, action shall not be delayed on other amendment provisions.

3. Addresses of EPA offices.

a. Principal office.

Office of Water Enforcement and Permits
EN 336
401 M Street, S.W.
Washington, D.C. 20160

b. Regional offices.

Region I (New England)
John F. Kennedy Federal Building
Boston, MA 02203

Region II (New York, New Jersey)
26 Federal Plaza
New York, NY 10278

Region III (Pennsylvania, Maryland, Delaware, Virginia, West Virginia)
841 Chestnut Street
Philadelphia, PA 19107

Region IV (Kentucky, Tennessee, North and South Carolina, Mississippi, Alabama, Georgia, Florida)
345 Courtland Street N.E.
Atlanta, GA 30365

Region V (Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota)
230 South Dearborn Street
Chicago, IL 60604

Region VI (Arkansas, Oklahoma, Texas, Louisiana, New Mexico)
1201 Elm Street
Dallas, TX 75270

Region VII (Iowa, Missouri, Kansas, Nebraska)
726 Minnesota Avenue
Kansas City, KS 66101

Region VIII (Montana, North and South Dakota, Wyoming, Utah, Colorado)
999 18th Street
Denver, CO 80202

Region IX (California, Nevada, Hawaii, Arizona)
215 Fremont Street
San Francisco, CA 94105

Region X (Washington, Oregon, Alaska, Idaho)
1200 Sixth Avenue
Seattle, WA 98101