

The United States Department of the Interior

**BUDGET JUSTIFICATIONS
AND ANNUAL PERFORMANCE PLAN
FISCAL YEAR 2003**

Annual Performance Report
Fiscal Year 2001

**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

February 4, 2002

BUSINESS LINE: ENVIRONMENTAL PROTECTION

		FY 2002 Enacted	Uncontrollable Costs	Program Change	FY 2003 Request	Difference from FY 02
Regulation & Technology	\$\$\$	77,741	418	1,000	79,159	1,418
	FTE	225	0	0	225	0
Abandoned Mine Land	\$\$\$	0	0	0	0	0
	FTE	0	0	0	0	0
TOTAL	\$\$\$	77,741	418	1,000	79,159	1,418
	FTE	225	0	0	225	0

These amounts do not reflect the Administration's proposal to include the cost of CSRS/FEHB in this Budget. For FY 2003, the estimated amount for this business line is \$1,480.

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

ENVIRONMENTAL PROTECTION ENCOMPASSES

<p><i>State and Tribal Funding</i></p> <ul style="list-style-type: none"> ▪ <i>State Grants</i> ▪ <i>State Regulatory Activities</i> ▪ <i>Cooperative Agreement Funding</i> ▪ <i>Tribal Regulatory Development Grants</i> <p><i>Federal Programs & Federal Lands Program</i></p> <p style="padding-left: 40px;"><i>Indian Lands Program</i></p> <p style="padding-left: 40px;"><i>State Program Evaluation</i></p> <p style="padding-left: 40px;"><i>Program Development and Maintenance</i></p>
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This business line also provides for OSM's costs to ensure that States' programs are current with all Federal regulatory requirements. The State and Tribal Funding program activity includes grants to States to regulate coal operations on their lands. For States with cooperative agreements, this activity also includes grants to regulate coal operations on Federal lands.

Finally, this activity includes grants to tribes to develop regulatory programs and to assist OSM in the regulation of surface coal mining and reclamation operations on Tribal lands. State Program Evaluation funds OSM's oversight of State programs. The Federal Program funds OSM activities to ensure SMCRA compliance for non-primacy States (States without an approved regulatory program). The Federal Lands program activity funds OSM's activities in preparing Mining Plan Decision Documents for leased Federal coal as well as any regulatory activities on Federal Lands not covered by a cooperative agreement. The Indian Lands program activity funds OSM's regulatory responsibilities on Indian Lands.

Strategic Outcome: The protection of the environment and public from off-site impacts resulting from current surface coal mining operations and successful reclamation of lands affected by surface coal mining operations.

MISSION GOAL #2: *TO PROTECT PEOPLE AND THE ENVIRONMENT DURING CURRENT MINING OPERATIONS AND TO ENSURE THAT THE LAND IS RESTORED TO BENEFICIAL USE AFTER MINING HAS CEASED.*

Indicator Measure(s): The protection of the environment and public from off-site impacts resulting from surface coal mining operations and successful reclamation on lands affected by surface coal mining operations. The goals are accomplished through the cooperative efforts of the Office of Surface Mining and State regulatory offices. The following measures are used by OSM as an indicator of annual performance.

MAJOR OUTPUTS AND MEASURES:

Percentage of sites free of off-site impacts and increase in number of acres released from Phase III bonds.

PERFORMANCE MEASURES – ACTUAL AND PROJECTED

Table 4: Strategic Measures and FY 2003 Measures	2001 Actual	2002 Enacted	2003 Estimate
<p><i>By 2005, the Surface Mining Program (SMP) will protect the environment better as indicated by the percentage of mine sites that are free of off-site impacts.</i></p> <ul style="list-style-type: none"> ▪ In FY 2003, the SMP will free 94% of sites from off site impacts 	93.9	94%	94%
<p><i>By 2005, the SMP will protect the environment better as indicated by the number of acres released from Phase I & II Performance Bonds.</i></p> <ul style="list-style-type: none"> ▪ In FY 2003, the SMP will maintain the acres released from Performance Bonding Phases I & II at 112,000. 	180,503	112,000	112,000
<p><i>By 2005, the SMP will better protect the environment as indicated by the number of acres released from Phase III Performance Bonds.</i></p> <ul style="list-style-type: none"> ▪ In FY 2003, the SMP will release 75,000 acres from Phase III Performance Bonds. 	81,853	75,000	75,000
<p><i>By 2005, OSM will award regulatory grants funds within 60 days of receipt of a complete application in accordance with its customer service standards.</i></p> <ul style="list-style-type: none"> ▪ In FY 2003, OSM will provide 96% of regulatory grants and award funds within 60 days. 	97%	96%	96%

Data Verification and Validation for Measures: The overall goal of the regulatory program is to minimize off-site impacts, including problems that may affect persons or property beyond the permit area. Examples of off-site impacts include hydrological problems that impact a nearby property owner’s water supply, damage to property from blasting on the mine site, creation of off-site landslides or other instabilities, occurrence of off-site sedimentation, Acid Mine Drainage (AMD) and mining off of the permit area. All off-site impacts observed are evaluated in terms of severity and included in State program and other evaluation reports. The indicator and measure will be the number on incidents involving off-site impacts that are investigated, documented and verified. Progress under this goal will be measured by comparison over time of the number and severity of off-site impacts.

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

Actions Required to Achieve Annual Goals: OSM continues its outreach to address concerns related to mountaintop removal operations, acid mine drainage, and slurry and other impoundments, to evaluate its rules, to advance re-mining efforts and to ensure that contemporaneous reclamation is occurring.

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

The FY 2003 President's Budget requests \$57.5 million to fund twenty-four State regulatory programs at the maximum 50 percent Federal match level. Additionally, this amount will provide full funding for fourteen Federal lands cooperative agreements with States and full funding of four Tribal regulatory program development grants.

Excluding the \$1.5 million for the Administration's legislative proposal to CSRS/FEHP, in FY 2003, the budget request includes \$8.0 million to continue its State program oversight activities; \$5.2 million to fund regulatory programs in non-primacy States like Arizona, Tennessee and Washington. Also included in the FY 2003 budget request is \$1.4 million for OSM to regulate Federal Lands. OSM also requests \$2.3 million for regulatory programs on Indian Lands and \$4.5 million for program development and maintenance to ensure that regulatory standards adequately reflect changes in technologies and program needs.

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

**Table 5 – Justification of Program and Performance
Environmental Protection**

Summary Increases/Decreases for FY 2003
(Dollars in Thousands)

Program Activity		Regulation & Technology		Abandoned Mine Lands		Total		Inc/Dec
		2002	2003	2002	2003	2002	2003	
State and Tribal Funding	\$\$\$	56,575	57,575	0	0	56,575	57,575	1,000
	FTE	0	0	0	0	0	0	0
State Program Evaluation	\$\$\$	7,851	8,007	0	0	7,851	8,007	156
	FTE	84	84	0	0	84	84	0
Federal Programs	\$\$\$	5,157	5,255	0	0	5,157	5,255	98
	FTE	53	53	0	0	53	53	0
Federal Lands	\$\$\$	1,437	1,464	0	0	1,437	1,464	27
	FTE	15	15	0	0	15	15	0
Indian Lands	\$\$\$	2,294	2,334	0	0	2,294	2,334	40
	FTE	21	21	0	0	21	21	0
Program Dev/Maint.	\$\$\$	4,427	4,524	0	0	4,427	4,524	97
	FTE	52	52	0	0	52	52	0
TOTAL	\$\$\$	77,741	79,159	0	0	77,741	79,159	1,418
	FTE	225	225	0	0	225	225	0

ONGOING PROGRAM

1. State and Tribal Funding

a. State Grants

Twenty-four States have approved permanent regulatory programs (primacy) for the regulation of coal mining activities. Primacy States have the most direct and critical responsibilities for conducting regulatory operations. The States have the unique capabilities and knowledge to regulate the lands within their borders. Providing a 50 percent match of Federal funds to primacy States in the form of Administration and Enforcement (A&E) Grants results in the highest benefit and the lowest cost to the Federal Government. If any State relinquished primacy, OSM would have to hire sufficient numbers and types of Federal employees to implement the program. The cost to the Federal Government would be significantly higher.

b. State Regulatory Activities

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

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

c. Cooperative Agreement Funding

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

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

d. Tribal Regulatory Development Program Grants

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

**Table 6 – Fiscal Year 2003 State & Tribal Regulatory Funding Estimates
(Federal dollars only)**

The figures below are based on the adjusted FY 2002 grant allocations and mandated increase for West Virginia. These amounts represent 50% of the costs to regulate surface coal mining on non-federal lands and 100% of the costs on Federal Lands. Actual grant awards will be based on historical expenditures, justifications by the States, and OSM evaluations.

State/Tribe	Non-Federal Lands	Federal Lands	Total
Alabama	991,130	12,241	1,003,371
Alaska	179,230	0	179,230
Arkansas	140,326	0	140,326
Colorado	342,676	1,509,625	1,852,301
Illinois	2,609,659	115,264	2,724,923
Indiana	1,938,321	0	1,938,321
Iowa	147,365	0	147,365
Kansas	135,918	0	135,918
Kentucky	12,348,062	498,444	12,846,506
Louisiana	186,134	0	186,134
Maryland	484,827	0	484,827
Mississippi	107,690	0	107,690
Missouri	498,821	0	498,821
Montana	738,233	221,383	959,616
New Mexico	430,530	272,605	703,135
North Dakota	210,665	270,856	481,521
Ohio	1,593,987	0	1,593,987
Oklahoma	654,015	418,844	1,072,859
Pennsylvania	11,179,766	0	11,179,766
Texas	1,521,366	0	1,521,366
Utah	1,055,919	676,231	1,732,150
Virginia	3,320,077	3,656	3,323,733
W. Virginia	10,141,348	0	10,141,348
Wyoming	231,038	1,697,491	1,928,529
Crow Tribe	0	71,545	71,545
Hopi Tribe	0	165,864	165,864
Navajo Nation	0	427,753	427,753
N. Cheyenne	0	26,095	26,095
Totals	51,187,101	6,387,899	57,575,000

2. State Program Evaluation

a. Oversight Strategy

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

OSM and States conduct oversight under a results-oriented strategy that emphasizes cooperative problem solving, tailoring evaluations to State-specific conditions and the development of performance agreements. The strategy has provided a more positive attitude and spirit of cooperation that provides the new opportunity for OSM to work cooperatively with the States to improve State program implementation. To provide clarity in guidance and consistency in oversight and evaluation, OSM continues to evaluate and refine its oversight strategy. OSM and the States plan to review the oversight strategy in FY 2003 and, as appropriate, will make changes.

b. OSM-State Performance Agreements

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

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

c. Public Participation

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

d. Oversight Inspections

SMCRA requires the Secretary to conduct mine inspections to evaluate the administration of State programs. Inspections are conducted on a range of sites from those actively producing coal to forfeited bond sites awaiting reclamation. OSM's policy is to allow its regional and field managers discretion and flexibility to stratify and selectively target their inspections to focus on those topics and activities that present the best opportunity for environmental improvement or

the best means of evaluating the impact of program implementation on society and the environmental. For example, inspections may focus on high-priority problems such as acid mine drainage, impoundments and other problem areas, as well as current coal mining operations and abandoned mine sites awaiting reclamation. This policy provides the most effective use of available resources.

Consistent with the intent of SMCRA that States take the lead in regulatory programs, the vast majority of inspections were performed by the States: about 86,700 in 2001. In contrast, OSM conducted just over 2,211 inspections in primacy States.

The projected FY 2003 oversight inspection workload includes an estimated 2,200 program evaluation inspections. The actual number will be adjusted depending on the program areas, the presence or absence of problems, input from the public, and the terms of the performance agreements in each State.

e. Ten Day Notices

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

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

In FY 2001, OSM issued 133 TDNs to States. For the TDNs issued in FY 2001, the State took appropriate action to cause the violation to be corrected.

Table 7 provides FY 2001 data on the number of State and OSM oversight inspections conducted in Primacy States.

Table 7 – FY 2001 Primacy State and OSM Inspections				
	STATE			OSM TOTAL
	PARTIAL	COMPLETE	TOTAL	
Alabama	350	2773	3123	118
Alaska	39	17	56	0
Arkansas	56	117	173	9
Colorado	216	274	490	11
Illinois	1679	628	2307	99
Indiana	1859	942	2801	69
Iowa	192	96	288	21
Kansas	108	56	164	17
Kentucky	15481	9547	25028	419
Louisiana	16	8	24	2
Maryland	551	318	869	37
Mississippi	8	4	12	2
Missouri	116	184	300	35
Montana	111	88	199	14
New Mexico	120	60	180	5
North Dakota	486	146	632	15
Ohio	2189	1544	3733	229
Oklahoma	543	393	936	30
Pennsylvania	11073	7741	18814	488
Texas	201	84	285	11
Utah	185	113	298	4
Virginia	3491	3026	6517	160
West Virginia	11301	7845	19146	410
Wyoming	214	123	369	11
Total	51,723	37,177	86,744	2,211

3. Federal Programs

This program activity regulates coal-mining activities in non-primacy States (those with a Federally-administered regulatory program). Within this program activity, OSM administers a full regulatory program. Significant components of this program activity include review of permit applications (including preparation of any necessary NEPA compliance documents), determining performance bond amounts, inspection and enforcement (including civil penalty assessment and collection), release of performance bonds, reclamation of bond forfeiture sites and processing petition to designate lands as unsuitable for mining.

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

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

- Tennessee: In Tennessee there are 136 active minesites, 32 inactive sites, and 176 abandoned sites. Coal production has stabilized in recent years with the FY 2002 trend indicating an upturn.

While OSM has discussed the possible return of primacy to Tennessee with State officials on numerous occasions over the years, there continues to be no interest shown in assuming the program.

- Washington: There are two active surface coal mines regulated under the Washington Federal Program. The Centralia Mine, located about 25 miles southeast of Seattle, Washington produces approximately five million tons of coal annually and will affect some 8,100 acres of land within a 14,200-acre permit area during the 41-year life of the mine. The John Henry No 1 Mine, covering 422 acres near the City of Black Diamond, produces approximately 1,200 tons of bituminous coal annually. During FY 2003, the operator, Pacific Coast Coal Company plans to apply for a final bond release for about 20 acres.

Table 8 provides inspection and enforcement data for Federal program States during 2001.

Table 8 – FY 2001 Federal Program States Inspection / Violation Data							
STATE	INSPECTIONS			NOV'S		FTA CO'S	
	COMPLETE	PARTIAL	TOTAL	ACTIONS	VIOLATIONS	ACTIONS	VIOLATIONS
Georgia	6	5	11	0	0	0	0
Tennessee	964	1031	2006	15	17	3	4
Washington	8	18	26	5	5	0	0
TOTALS	978	1054	2032	20	22	3	4

4. Federal Lands Program

This program activity includes direct OSM regulatory activities on Federal lands in States without cooperative agreements, implementation of cooperative agreements with primacy States to regulate coal mining on Federal lands within their borders, preparation of Mining Plan Decision Documents under the Mineral Leasing Act and processing valid existing rights claims that involve certain Federal Lands. As part of this program activity, OSM consults and coordinates with State Historic Preservation Offices, the U.S. Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), U.S. Forest Service (USFS) and National Park Service (NPS). The processing of Mining Plan Decision Documents constitutes the largest part of the workload under this program activity.

Table 9 below provides Projected Mining Plan Decision Document workload data.

Table 9 – Projected Mining Plan Decision Document Workload on Leased Federal Coal, by Fiscal Year		
Mining Plans and Modifications		
Activity	FY 2002	FY 2003
In progress prior FY	8	10
Anticipated current FY	15	14
Total FY Workload	23	24
Completed in FY	13	16
Balance, end of FY	10	8

This program activity also provides support to BLM and USFS in leasing activities that involve Federal coal resources. OSM participation in NEPA compliance analyses prepared at the leasing stage ensures the consideration of OSM permitting or mine plan approval concerns. This cooperative effort saves mining companies valuable time in the leasing and mine plan approval process; it also may result in improved resource recovery. In addition, satisfactory evaluation of the environmental impacts of coal mining in the proposed lease area at the time of leasing can

reduce the likelihood of a need for a subsequent Environmental Assessment (EA) or Environmental Impact Statement (EIS) for mining plan approval under SMCRA.

5. Indian Lands Program

OSM is responsible for coal mining and reclamation activities on Indian lands. The Indian lands program includes permit application review, determination of performance bond amounts, inspection and enforcement, bond release, and maintaining a staff to coordinate with the individual Tribes and other Federal agencies, as necessary.

The Crow, Hopi, Ute Mountain Ute Tribes and Navajo Nation have coal-mining activities on their lands. The McKinley Mine and Navajo Mine are large surface mines on the Navajo Nation. The Black Mesa/Kayenta mining complex involves Navajo coal beneath Navajo surface, and coal jointly owned by the Navajo Nation and the Hopi Tribe, most of which is beneath Navajo surface. There is one mine in Montana, mining coal owned by the Crow Tribe, and one in Colorado with two permits on lands owned by the Ute Mountain Ute Tribe. Both the Crow and Northern Cheyenne Tribes are evaluating coal properties for future development. The Indian lands mines are among the Nation’s largest in the country, with a total of about 100,000 acres under permit.

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

TRIBE	INSPECTIONS			NOV’S	
	COMPLETE	PARTIAL	TOTAL	ACTIONS	VIOLATIONS
Crow Tribe	4	8	12	0	0
Hopi Tribe	6	4	10	0	0
Navajo Nation	54	68	122	8	8
Ute Tribe	8	4	12	0	0
TOTALS	72	84	156	8	8

**Table 11-Projected Permit and Permit Revision Workload
where OSM is the Regulatory Authority, by Fiscal Year**

Activity	Federal Programs (Non-Primacy States)		Indian Lands	
	FY 2002	FY 2003	FY 2002	FY 2003
In progress previous FY	60	30	70	75
Anticipated current FY	57	68	75	75
Total FY workload	117	98	145	150
Completed in FY	87	74	70	75
Balance, end of FY	30	32	75	75

6. Program Developments and Maintenance

Work elements under this program activity are primarily policy actions, such as rulemaking, grants management and special studies.

a. Rulemaking

OSM issues rules and associated information collection clearance packages required by the Office of Management and Budget. Functions under this program activity include: coordinating clearance and publication of rules and preparing environmental assessments, environmental impact statements, records of compliance, and economic analyses for all rules prepared by OSM. OSM also maintains the administrative record for rules and coordinates with the Office of the Federal Register.

Rulemaking Associated with State Programs: OSM assists States to develop, administer, implement and maintain their approved regulatory programs. Decisions affecting State programs are Federal rulemaking actions. OSM evaluates State-initiated (statutory, regulatory, or changes in the program's provisions, scope, or objectives), as well as OSM modifications, that are a result of legal interpretations or required changes to SMCRA and Federal Regulations. In its evaluation, OSM solicits public comments through proposed rules published in the Federal Register, holds public meetings, maintains the administrative record, approves or does not approve proposed State program amendments, and publishes the decisions as final rules in the Federal Register. During FY 2001, OSM published 22 proposed rules and 24 final rules.

States are required to amend their programs as a result of changes to SMCRA and Federal regulations. Under the authority of section 521(b) of SMCRA, OSM recommends withdrawal, in whole or in part, of an approved State program if it finds a State is failing to enforce the approved program after conducting hearings, establishing remedial actions, monitoring

compliance, evaluating performance, and implementing the rulemakings associated with such withdrawal. OSM also responds to requests under section 521 (b) to evaluate a State program.

When an amendment is required, OSM notifies the States of the required change and reviews the State submission and either approves or does not approve the changes. This activity represents a significant workload for OSM staff. During FY 2001, the State Amendment activity was identified as follows:

Amendment Type	Pending Oct. 1, 2000	Received FY 2001	Completed FY 2001	Pending Sept. 30, 2001
Informal	8	13	20	1
Formal	25	28	21	32
Total	33	41	41	33

OSM Rulemaking Initiatives: Before development of a formal proposed rule, OSM involves interested parties. Stakeholder participation results in improved regulatory proposals. During FY 2001, OSM published two final rules, (1) AML Fee Collection and Coal Production Reporting on OSM-1 (May 23, 2001) and Ownership and Control (December 19, 2000).

Key rulemaking initiatives for which we anticipate activity in FY 2003 are described below.

- *Mountaintop Mining/Valley Fills:* As part of a settlement agreement arising from litigation in West Virginia, OSM is participating in the preparation of an environmental impact statement (EIS) to assess the impacts of various regulatory alternatives concerning mountaintop mining and the associated placement of excess spoil in valley fills and streams. Should OSM decide to pursue rulemaking on this topic, that activity would begin after completion of the EIS.
- *Subsidence:* On April 27, 1999, the U.S. Court of Appeals for the Federal Circuit remanded certain provisions of OSM's regulations concerning subsidence control plans and the requirement to repair or compensate for subsidence-related material damage to certain structures. After suspending those provisions on December 22, 1999, OSM anticipates rulemaking during FY 2002 to address this topic and other issues relating to subsidence from underground mining. That rulemaking effort would extend into FY 2003.
- *Contemporaneous Reclamation:* We anticipate initiating rulemaking in FY 2002 to clarify the statutory requirement that coal mine operators conduct mining and reclamation activities in a contemporaneous manner. That rulemaking effort would also extend into FY 2003.

- *Remining:* During FY 2002 and FY 2003, OSM will continue to explore rulemaking options to facilitate the removal and reclamation of abandoned coal mine refuse piles, as directed by the Energy Policy Act of 1992.
- *Other Regulatory Initiatives:* OSM will continue to work with States, other Federal agencies, and public stakeholders to identify areas requiring regulatory changes. One area of possible rulemaking in FY 2002 and FY 2003 deals with the need to prepare an emergency action plan to be used in the event of an impoundment failure. This is in response to an internal review of the Department of the Interior's Dam Safety Program and a fairly recent impoundment failure at a mining site.

b. Grants Management

OSM periodically holds meetings/workshops with the State/Tribal grantees to provide training for grantees and to keep them abreast of policies and procedures. In addition, Grantees provide input to the Grants Management Program by participating on ad hoc teams and by reviewing and commenting on proposed changes in the program. OSM, working with the States has developed an electronic grant application process. The system was implemented in the Mid-Continent Region for FY 2002 grants. Once fully implemented, this system will simplify and expedite the application process for the States. This cooperative working relationship contributes to streamlined application and awards processes, faster obligation of Federal funds, innovative program monitoring and less paperwork-intensive reporting and close-out of grants.

c. Special Projects

Special projects include interpretation of SMCRA, reports to Congress, legislative analyses, and assistance in responses to litigation. OSM conducts studies and analyses in response to Departmental initiatives and coordinates with other Bureaus and Federal agencies, including the Fish and Wildlife Service (Endangered Species Act), Advisory Council on Historic Preservation (National Historic Preservation Act), and EPA (Clean Water Act), whose activities affect the surface coal mining regulatory program.

Justification of Program Changes:

Environmental Protection	FY 2003 Budget Request	Program Changes (+/-)
\$(000)	79,159	1,000
FTE	225	0

Program Changes:

A net increase of \$1 million is proposed for State regulatory grants. This consists of an overall decrease of \$1 million in aggregate total for all State Grants and an increase of \$2 million specifically to enable West Virginia to continue with their current program.

In 2000, OSM received a supplemental appropriation in the amount of \$9.8 million to fund one-time technological and programmatic improvements to the State's permit evaluation and monitoring capabilities, and to provide Federal matching dollars for increased staffing in the State's Department of Environmental Protection.

With the funding, West Virginia has initiated action under its Program Enhancement Cooperative Agreement (PECA) to develop a centralized database for geologic and hydrologic data; digitize existing permit maps; develop an electronic permitting system; modify software to enhance watershed modeling; and establish water monitoring trend stations. West Virginia has expended 12 percent of the funds awarded under PECA, and all projects are about 25 percent complete; the State has until January 31, 2003 to complete all projects under PECA.

In addition, the State increased revenue for staffing and entered a Program Improvement Cooperative Agreement (PICA) with OSM to hire 59 additional employees. While more than half of the positions have been filled by the State, additional vacancies have resulted due to normal attrition and filling the new positions with existing employees. West Virginia still needs to hire 45 additional employees to reach its full staffing level of 286 positions by October 31, 2002.

OSM anticipates that the supplemental funding for staffing will be exhausted at the end of 2002. In order to avoid a more expensive Federal takeover of the West Virginia regulatory program, OSM will use the proposed 2003 increase to maintain the current staffing level in the State's program. These funds will again be matched by funding from the State legislature, and will remain available until expended. The increase thus becomes part of West Virginia's base funding and will be used to sustain the current required level of the program.

Office of Surface Mining Reclamation and Enforcement

By State and Tribe Funding Data
FY 2001 Obligations for Grants, Cooperative Agreements and Federal Project Spending
(Dollars in Thousands)

STATE	Environmental Restoration				Environmental Protection			Tech. Dev. & Trans	
	AML Funding		Federal Reclamation			Regulatory		SOAP	
TRIBE				Program		Grants/Agreements			TOTAL
	Reclamation	Emergency	Clean	High Priority	Emergency	Non-Federal	Federal		
	Projects	Projects	Streams	Projects	Projects	Lands	Lands		
Alabama	3,602	400	290			974	14	55	5,335
Alaska	2,912	25				178			3,115
Arkansas	1,600	15				130			1,745
California				50					50
Colorado	2,871				23	491	1,356		4,741
Georgia				278					278
Illinois	10,974	780	736			2,568	115		15,173
Indiana	6,916	328	324			1,864			9,432
Iowa	1,615		173		39	146			1,973
Kansas	1,615	465				137			2,217
Kentucky	18,171		723		3,491	12,409	487	1,032	36,313
Louisiana	141					189			330
Maryland	868		164		20	487		35	1,574
Michigan					2				2
Mississippi						116			116
Missouri	1,836	50	172			491			2,549
Montana	3,847	125				223	738		4,933
New Mexico	5,304					267	422		5,993
North Dakota	1,706	100				274	213		2,293
Ohio	7,359	2,300	499			1,600		80	11,838
Oklahoma	1,600	60	153			697	391		2,901
Pennsylvania	40,231		2,098		1,950	11,223		225	55,727
Rhode Island					159				159
South Dakota									0
Tennessee				2,300	11				2,311
Texas	1,653					1,498			3,151
Utah	2,097					257	1,508		3,862
Virginia	4,316	2,050	309			3,333	4		10,012
Washington				213	200				413
West Virginia	23,113	3,500	1,259			8,143		225	36,240
Wyoming	29,185					234	1,719		31,138
Crow	686					63			749
Hopi	2,843					167			3,010
Navajo	4,271					433			4,704
N. Cheyenne						15			15
Total	181,332	10,198	6,900	2,841	5,895	48,607	6,967	1,652	264,392

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