

	U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  <b>DIRECTIVES          SYSTEM</b>	<b>Subject Code:</b> <b>REG-23</b>
		<b>Transmittal Number:</b> 966
		<b>Date:</b> January 31, 2011
<b>Subject:</b> Corrective Actions for Regulatory Program Problems and Action Plans		
<b>Approval:</b> Joseph G. Pizarchik		Title: Director

1. **Purpose.** This Directive provides corrective action procedures that apply when the Office of Surface Mining Reclamation and Enforcement (OSM) identifies problems with a state’s or tribe’s approved regulatory program, or the state’s or tribe’s actions under that program, that could, if left unaddressed, result in a failure by the state or tribe to effectively implement, administer, enforce, or maintain its approved regulatory program. The Directive also provides transparency to the corrective action process.

2. **Summary of Changes.** This Directive reinstates, revises, and renames previous Directive REG-23, “Development and Implementation of Actions Plans,” which was rescinded on July 26, 1996, in Transmittal Number 846, “Rescission of Directives.” This Directive, “Corrective Actions for Regulatory Program Problems and Action Plans,” includes strategies to correct Regulatory Program Problems and procedures to follow when a state or tribe fails to meet the terms of an Action Plan. In addition, the Directive clarifies and delineates OSM’s roles and responsibilities in reporting and correcting Regulatory Program Problems.

3. **Definitions.**

a. **Action Plan.** A detailed schedule of specific measures to be taken to resolve Regulatory Program Problems identified during OSM’s oversight of a state or tribal regulatory program.

b. **Regulatory Program Problem.** An issue identified during OSM’s oversight of a state or tribal regulatory program that could result in a failure by the state or tribe to effectively implement, administer, enforce, or maintain all or any portion of its approved regulatory program, including a state’s or tribe’s failure to adopt and implement program amendments that are required under 30 CFR Part 732 and 30 CFR Subchapter T.

4. **Policy.**

States and tribes with approved regulatory programs are required to implement, administer, enforce, and maintain those programs in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA), OSM’s implementing regulations, and the provisions of the approved program. This Directive provides procedures for Field Office Directors (FODs) to follow when they identify Regulatory Program Problems, as defined above. The principal focus

should be on issue resolution and not on process. FODs must exercise prudent judgment and consider all pertinent factors associated with bringing an issue to resolution when determining reasonable and practical milestones and timing for Action Plans. FODs should use these procedures to make every effort to resolve Regulatory Program Problems in the same Evaluation Year as they are identified or as soon as practical thereafter.

To document progress in resolving Regulatory Program Problems, FODs will track and report these problems in Annual Evaluation Reports in accordance with guidance in Directive REG-8, "Oversight of State and Tribal Regulatory Programs." For those Regulatory Program Problems that are unresolved, or expected to be unresolved, for more than 180 days from the date of notification to the state or tribe, FODs will prepare Action Plans that state the nature of the issue and the selected resolution method and provide a timetable for implementation of the resolution method. The Action Plans will be attached to the Performance Agreement/Evaluation Plans for each state or tribe.

Finally, this Directive provides the procedures to follow when a state or tribe fails to correct an identified Regulatory Program Problem or comply with an Action Plan.

5. **Responsibilities.**

a. **Director.**

When a state or tribe fails to complete the terms of an Action Plan, the Director will approve or deny the Regional Director's (RD's) recommendation that the Director initiate the process for substituting direct Federal enforcement for all or part of the state or tribal program or withdrawing approval of the state or tribal program, in whole or in part, following the procedures of 30 CFR Part 733.

b. **Regional Directors.**

- (1) Monitor the progress in resolving Regulatory Program Problems.
- (2) Provide appropriate available technical assistance to the Field Office and the state or tribe in the resolution of Regulatory Program Problems, upon request of the FOD or state or tribal regulatory authority.
- (3) Provide any guidance or assistance necessary to resolve Regulatory Program Problems for which the Field Office and the state or tribe are unable to agree upon a course of action.
- (4) Review cases where a state or tribe has failed to comply with an Action Plan. Modify the terms of the current Action Plan at the RD's discretion.
- (5) Recommend that the Director initiate the process for substituting direct Federal enforcement for all or part of the state or tribal program or withdrawing approval of the state or tribal program, in whole or in part, where a state's or tribe's failure to implement an

Action Plan provides reason to believe the state or tribe is not effectively implementing, administering, maintaining, or enforcing any part of its regulatory program.

c. Field Office Directors.

- (1) Determine if Regulatory Program Problems exist.
- (2) Explore solutions and compliance strategies in consultation with the state or tribe if a Regulatory Program Problem is determined to exist.
- (3) Develop a written Action Plan if the identified Regulatory Program Problems remain unresolved or are expected to remain unresolved for more than 180 days from the date a problem is reported to a state or tribe. The plan should set out the identified issues and the selected solutions and provide a timetable for implementing the solutions with interim steps, if necessary. Provide an opportunity to the state or tribe to review and comment on the proposed Action Plan.
- (4) List Regulatory Program Problems and Action Plans in Annual Evaluation Reports as provided for in REG-8 and include a copy of the Action Plan in the Performance Agreement/Evaluation Plan for the state or tribe. Any outstanding Regulatory Program Problems predating this directive will be listed in the Annual Evaluation Reports for Evaluation Year 2011 as provided for in REG-8 and attached to the Performance Agreement/Evaluation Plans for each subsequent evaluation year until final resolution.
- (5) Monitor Action Plan implementation, tracking all dates, providing the state or tribe with reminder notices of upcoming target dates, and discussing implementation progress and problems with the state or tribe on a routine basis.
- (6) Coordinate assistance efforts where the Action Plan requires OSM to provide technical or other assistance to the state or tribe.
- (7) Establish and maintain Action Plan files.
- (8) Notify the RD when a state or tribe fails to comply with the terms of any Action Plan.

6. Procedures.

a. Compliance Strategies. When a FOD identifies a Regulatory Program Problem, one or more of the following strategies may be used to correct it. The FODs are not, however, limited to the suggestions in this list and are encouraged to find innovative solutions to solve Regulatory Program Problems, where appropriate.

- Engage in informal dialogue with the state or tribe.
- Suggest changes in state or tribal procedures.

- Suggest changes in the state's or tribe's use of resources or training staff.
- Provide technical assistance, if available.
- Increase the number of oversight inspections.
- Identify other workable state or tribal models and practices to states or tribes with problems in specific areas.
- Conduct a formal audit of state or tribal permitting and compliance activities.
- Conduct targeted intense special studies of problem areas using technical experts.
- Conduct public fact-finding hearings on program deficiencies.
- Form OSM inspection teams that are available to supplement existing inspection resources in states or tribes with program problems.
- Track problem categories of cases more closely to determine if a systemic problem exists.

b. Regulatory Program Problem Resolution. Whenever the FOD identifies a problem that could ultimately constitute a reason to believe that the state or tribe is not effectively implementing, administering, enforcing, or maintaining all or any portion of its approved state or tribal regulatory program, he or she must develop a strategy to correct the problem expeditiously. However, if the Regulatory Program Problem cannot be, or is not expected to be, resolved within 180 days after identification by the FOD, then an Action Plan is required. In no case should a Regulatory Program Problem go unresolved for more than 180 days without being the subject of an Action Plan.

The FOD, in consultation with the state or tribe, will develop the Action Plan. If the state or tribe does not accept the validity of the Regulatory Program Problem or will not work with OSM on an Action Plan, then the FOD will develop the appropriate Action Plan and will elevate the issue to the RD. The RD may direct the FOD to implement the Action Plan and/or recommend appropriate 30 CFR Part 733 actions to the Director.

c. Action Plan Content. Action Plans must be written with enough specificity to minimize misunderstandings. Corrective actions must be tailored to address the apparent cause of the problem. Plans must identify any necessary technical or other assistance to be provided by OSM, as well as the remedial measures to be taken by the state or tribe. Plans must include the following elements:

(1) Action Plan ID: 2 digit state or tribe Code + Evaluation Year Action Plan Started + 3 digit Sequence Number; for example, CA-2010-001 (this unique identification for each Action Plan will be reported in the Annual Evaluation Report in accordance with REG-8);

(2) A short title for the problem and a clear, concise description of the problem;

(3) Explicit criteria for determining when complete resolution has been achieved;

(4) An orderly sequence of actions to be taken to remedy the problem; and

(5) A schedule for the completion of each action in the sequence. Time frames should be realistic, but they must also be designed to achieve an expeditious resolution.

d. Implementation, monitoring, and modification. The FOD must establish procedures to monitor Action Plan milestones and schedules. The FOD will closely coordinate with the state or tribe on milestones and schedules in the Action Plans and notify the RD promptly when a state or tribe fails to comply with the terms or milestones/schedule of an Action Plan. In consultation with the state or tribe, Action Plans may be revised by the FOD.

e. State's or Tribe's failure to comply with Action Plans. If the state or tribe has not met the terms of the Action Plan and all strategies have failed to correct the Regulatory Program Problem, then the FOD must promptly notify the RD. The RD will review the Action Plan, recommendations from the FOD, and the efforts of the state or tribe to correct the Regulatory Program Problem and will determine the appropriate course of action, which may require modification of the Action Plan or initiation of a 30 CFR Part 733 action. If the RD chooses not to modify the Action Plan, and determines that the state's or tribe's failure to implement the Action Plan provides him or her with reason to believe the state or tribe is not effectively implementing, administering, maintaining, or enforcing all or any portion of its approved state or tribal program, the RD must promptly notify the Director so that he or she can consider appropriate actions in accordance with 30 CFR Part 733.

f. Filing requirements. The Field Office must maintain a separate file for each Action Plan. Files must contain all documents relating to development, implementation, and completion of the plan and, at a minimum, must be maintained in active status until the program problem is finally resolved. File maintenance and disposition must be in accordance with Directive INF-1.

## 7. Reporting Requirements.

The status of all outstanding Regulatory Program Problems will be reported in accordance with Directive REG-8 procedures, and Action Plans will be attached to Performance Agreement/Evaluation Plans. Unresolved Regulatory Program Problems predating this directive must be reported in accordance with Directive REG-8, and any related Action Plans will be attached to Performance Agreement/Evaluation Plans for each subsequent evaluation year until final resolution. All Regulatory Program Problems will be reported in Annual Evaluation

Reports in accordance with Directive REG-8 until all terms of the plan have been completed successfully.

8. **Effect on Other Documents.** None.

9. **References.**

a. 30 CFR Part 732.

b. 30 CFR Part 733.

c. Directive INF-1, "OSM Records Management."

d. Directive REG-8, "Oversight of State and Tribal Regulatory Programs."

10. **Effective Date.** Upon issuance.

11. **Distribution.** Electronically.

12. **Appendices.** None.

**Contact:** Chief, Division of Regulatory Support. Telephone: (202) 208-2866.