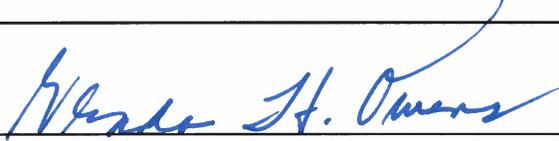


| | | |
|---|--|--|
|  | U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM | Subject Number: REG-8 |
| | | Transmittal Number: 997 |
| | | Date: MAY 30 2019 |
| Subject: Oversight of State and Tribal Regulatory Programs | | |
| Approval:  | Title: Deputy Director Exercising the Authority of the Director | |

1. **Purpose.** This Directive and its appendices establish procedures, responsibilities, and guidance for conducting oversight of State and Tribal regulatory programs.¹ This Directive applies to all Office of Surface Mining Reclamation and Enforcement (OSMRE) organizational units and personnel involved in oversight of State and Tribal regulatory programs starting with Evaluation Year 2020. (Evaluation Years run from July 1 of the preceding year through June 30 of the designated “Evaluation Year”.)

2. **Summary of Changes.** This is a revision of an existing Directive. Previous versions are rescinded.

3. **Definitions.**

a. **Action Plan.** A plan for resolving a Regulatory Program Problem, which is developed and implemented in accordance with Directive REG-23, Corrective Actions for Regulatory Program Problems and Action Plans. We separately define and address the term “Action Plan” in Directive REG-23.

b. **Annual Evaluation Report.** The State or Tribal program-specific report that OSMRE prepares annually on the evaluation of a State’s or Tribe’s implementation, administration, maintenance, and enforcement of the State or Tribal program.

c. **OSMRE Annual Report.** The report that OSMRE prepares annually, pursuant to SMCRA section 706, 30 U.S.C. 1296, and that the Secretary of the Interior submits to the President and the Congress on the activities the Secretary, OSMRE, and the Regulatory Authorities conduct pursuant to SMCRA.

d. **Oversight.** The process of evaluating and assisting the States and Tribes that have primary governmental responsibility for developing, authorizing, issuing, and enforcing State and Tribal statutes and regulations for surface coal mining and reclamation operations within their borders. OSMRE will conduct its oversight activities in a manner that recognizes that, with limited exceptions, the Surface Mining Control and Reclamation Act of

¹ While there are currently no Tribes that have approved regulatory programs, there are Tribes that are in the process of developing programs.

1977 (SMCRA) authorizes primacy States and Tribes to exercise exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within their borders, except as provided in provisions of SMCRA, such as sections 521, 30 U.S.C. 1271 (OSMRE's Federal Enforcement), and section 523, 30 U.S.C. 1273 (Federal Lands), and Title IV, 30 U.S.C. 1231-1244 (Abandoned Mine Reclamation).

e. Performance Agreement/Evaluation Plan. A written plan for conducting oversight activities in a State or on Indian lands during one or more Evaluation Years. OSMRE develops Performance Agreement/Evaluation Plans in collaboration with the RA to the extent possible with consideration of any input that the public provides. OSMRE and the RA are encouraged to sign the Performance Agreement/Evaluation Plan indicating that they mutually agree to the content. However, signatures and/or agreement are not mandatory for OSMRE to proceed to conduct oversight as specified in the Performance Agreement/Evaluation Plan. See also Appendix A, II.E., below.

f. Regulatory Program Problem. An issue OSMRE identifies during its oversight of an RA that could result in a State's or Tribe's failure to effectively implement, administer, enforce, or maintain all or any portion of its regulatory program, including a State's or Tribe's failure to adopt and implement program amendments that are required under 30 CFR Part 732 or 30 CFR Subchapter T. Regulatory Program Problems are defined and addressed in Directive REG-23, Corrective Actions for Regulatory Program Problems and Action Plans. See also Appendix A, II.H., below.

g. State. As provided under section 710(j) of SMCRA, 30 U.S.C. 1300(j), for purposes of this Directive and the implementation and administration of a Tribal program under Title V of SMCRA, any reference to a "State" in SMCRA, 30 CFR Chapter VII, and this Directive, will also be considered to be a reference to a "Tribe." Reference to a "Regulatory Authority" (or "RA") will include a State administering a "State program" or a Tribe administering a "Tribal program," as defined below.

h. State program. A State-administered program, that the Secretary approved under section 503 of SMCRA, 30 U.S.C. 1253, to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State. A State program also includes the State's regulatory activities under an OSMRE-approved cooperative agreement governing mining on Federal lands pursuant to section 523 of SMCRA.

i. Topic-specific Oversight Reports. Individual reports (by topic, by program) that OSMRE prepares as part of its oversight of each RA that contain the findings and details regarding the evaluation of specific elements of State or Tribal programs. See Appendix A, II.I., below. The Annual Evaluation Report for the RA contains summaries of the topic-specific oversight reports. Each Performance Agreement/Evaluation Plan (see 3.h., below) for an RA specifies topics that OSMRE will evaluate. Topic-specific oversight reports should include, at a minimum, the reports on the National Measurement Elements identified in section II.D., below:

(1) Off-site Impacts Oversight Report. The report that contains the findings and details regarding the evaluation of the Off-site Impacts National

Measurement Element.

(2) Reclamation Success Oversight Report(s). Individual report or reports that contain the findings and details regarding the evaluation of each Reclamation Success National Measurement Element.

j. Tribal program. A Tribe-administered program, that the Secretary approved under sections 503 and 710(j) of SMCRA, to regulate coal exploration and surface coal mining and reclamation operations on Indian lands under the jurisdiction of the Tribe.

4. **Policy**. The fundamental purpose of oversight is to ensure that RAs are effectively administering, implementing, maintaining, and enforcing their approved regulatory programs. To achieve this purpose, OSMRE will evaluate the administration of each State and Tribal program at least annually in accordance with 30 CFR 733.12(a). OSMRE also will conduct inspections of surface coal mining and reclamation operations as necessary to monitor and evaluate the administration of approved State or Tribal programs in accordance with 30 CFR 842.11(a)(1). OSMRE will prepare an Annual Evaluation Report for each RA in accordance with this Directive. OSMRE will work with the RAs to seek consensus on its oversight activities.

5. **Responsibilities**. In exercising its oversight responsibilities, OSMRE is committed to working with RAs to seek consensus, while maintaining its independence and the objectivity to carry out its duties under SMCRA.

a. Director/Deputy Director.

(1) Establish national priority review topics (see Appendix B, II.E.VI., below) as needed and standardized nationwide evaluation methodologies for specific topics when desired in consultation with the regulatory authority.

(2) When appropriate, appoint an Oversight Steering Committee (OSC), consisting of OSMRE and State or Tribal members, to exchange views and information on the implementation and results of OSMRE's oversight policies, standards, and procedures and to discuss potential national oversight review topics to ensure that the objectives of SMCRA are achieved. The Director/Deputy Director will appoint one OSMRE member from each of the OSMRE Regions and the Program Support Directorate. In addition, the Director/Deputy Director, in consultation with national organizations representing RAs, will appoint three members to represent RAs in each of the OSMRE Regions and one State member at large.

b. Assistant Director Program Support (ADPS).

(1) Develop, clarify, and revise national oversight policies, standards, and procedures in consultation with the Director and Regional Directors.

(2) Coordinate with Regional Directors on oversight issues and activities affecting their areas of expertise and responsibilities.

(3) Consistent with national regulatory requirements, procedures, and standards, provide supplemental guidance to Regional Directors to address issues arising from implementation of the national guidance. Do not construe this statement as authorizing waivers of any national guidance provisions.

(4) Establish the national oversight database policy and maintain the database of Regulatory Program Data for States and Tribes (DST).

c. Regional Directors (RDs).

(1) Assist ADPS in developing, clarifying, and revising national oversight policies, standards, and procedures.

(2) Coordinate with ADPS and RDs on oversight issues and activities affecting their Regions.

(3) Ensure that oversight activities are planned, conducted, monitored, and reported in accordance with national and regional policies, procedures, and guidance. Develop supplemental standards and procedures for the Region, as needed, in consultation with the Field Office Directors.

(4) Provide the technical assistance necessary to support oversight activities in the Region.

(5) Post the Evaluation Files, including the Annual Evaluation Reports and Performance Agreements/Evaluation Plans, on OSMRE's website.

d. Field Office Directors or equivalent (FODs).

(1) Plan and conduct oversight activities, including inspections, reviews, and technical analyses, and prepare related documents and reports in accordance with the approved State and Tribal regulatory programs, SMCRA, OSMRE's implementing regulations, the guidelines in this Directive, and other national and regional policies and procedures.

(2) Develop day-to-day operational procedures consistent with national and regional oversight policies.

(3) Coordinate technical and other assistance with the RD when necessary to properly conduct oversight activities.

(4) FODs will actively solicit, evaluate, and respond to public participation. At a minimum, each Field Office will provide an email address, phone number, and physical address where the public can easily seek information or provide input. This contact information will be in a prominent location on the OSMRE website. The Field Office will acknowledge receipt and appreciation for public input in a timely manner. Additionally, information and data posted on the OSMRE website will include contact information that the public can use. Each Field Office is encouraged to maintain a list of

“frequently asked questions” (FAQ) on the OSMRE website that would contain brief answers for questions often asked of the Field Office.

(5) Prepare a Performance Agreement/Evaluation Plan, cooperatively with the RA, to the extent possible.

(6) Assist RAs with resolving identified problems by providing technical or other assistance as necessary and available and encourage RAs proactively to seek OSMRE assistance in preventing problems and issues.

(7) Prepare an Annual Evaluation Report for each RA within his or her geographic area of responsibility on the schedule prescribed in the RA’s Performance Agreement.

(8) Provide electronic copies of the Performance Agreement/Evaluation Plans and final Annual Evaluation Reports and significant supporting documents, for posting on OSMRE’s website for public access.

e. Oversight Steering Committee (OSC). Analyze and monitor, in consultation, with States, Tribes, RDs, and FODs, the implementation and results of oversight policies, standards, and procedures – and analyze potential national oversight review topics – to ensure that the objectives of SMCRA are achieved. Recommend changes to any standards or procedures to the Director/Deputy Director to provide continual improvement of the oversight process.

f. Office of Communications (OC). Coordinate with RDs, FODs and ADPS to incorporate information from Annual Evaluation Reports into the OSMRE Annual Report, including electronic documents, as appropriate.

6. **Procedures**. Oversight activities will be planned, conducted, and reported in accordance with SMCRA, OSMRE’s applicable regulations, this Directive and its appendices, and all other relevant directives and supplemental guidance. OSMRE will also fully consider approved State and Tribal regulatory programs when it engages in oversight activities.

7. **Reporting Requirements**. Each FOD will compile the data needed for all core data tables and prepare an Annual Evaluation Report for each RA within his or her area of responsibility. OC, in concert with RDs, FODs, and ADPS will incorporate information from the Annual Evaluation Reports into the OSMRE Annual Report, as appropriate.

8. **Effect on Other Documents**. Supersedes Directive REG-8, dated January 31, 2011.

The definitions and provisions contained in this Directive do not alter or modify any regulatory definitions or provisions in SMCRA, the Code of Federal Regulations, or approved State or Tribal programs in any way. To the extent the definitions and provisions in this Directive differ from the applicable statutory and regulatory definitions and provisions in any way, OSMRE offices and State and Tribal regulatory authorities are

bound by the applicable statutory and regulatory definitions and provisions.

9. **References to Other Directives.**

- a. Directive AML-22, Evaluation of State/Tribe Abandoned Mine Land Programs.
- b. Directive INF-1, OSM Records Management.
- c. Directive INF-2, Administrative Records Systems.
- d. Directive INF-3, Freedom of Information Act (FOIA).
- e. Directive REG-23, Corrective Actions for Regulatory Program Problems and Action Plans.

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

11. **Distribution.** Electronically.

12. **Appendices.**

- a. Appendix A – “Procedures and Guidelines for Oversight and Reporting.”
- b. Appendix B – “Annual Evaluation Report Preparation Guidance.”

Contact: Chief, Division of Regulatory Support; 202-208-2895.

**APPENDIX A
PROCEDURES AND GUIDELINES FOR OVERSIGHT AND REPORTING**

CONTENTS

| | | |
|-----|--|------|
| I. | BACKGROUND AND PURPOSE | A-2 |
| II. | PROCEDURES | A-3 |
| | A. General Approach | A-3 |
| | B. Outreach..... | A-3 |
| | 1. Public Participation and Outreach | A-4 |
| | 2. Information Accessibility | A-4 |
| | 3. Outreach and Development of a Performance Agreement/Evaluation Plan | A-4 |
| | C. Oversight Inspections | A-5 |
| | 1. Determining the Target Number of Oversight Inspections for Each State or Tribe | A-6 |
| | 2. Establishing the Ration of Complete to Partial Inspections | A-7 |
| | 3. Selecting Random and focused Inspections | A-7 |
| | 4. Conducting Independent Inspections..... | A-8 |
| | D. National Measurement Elements and Reporting of End Results | A-8 |
| | 1. Off-Site Impacts | A-8 |
| | a. Purpose and Goal | A-8 |
| | b. Definition of Off-site Impact..... | A-9 |
| | c. Impacts Not Prohibited under the RA’s Program | A-10 |
| | d. Impacts on Bond Forfeiture Sites | A-10 |
| | e. Positive Impacts..... | A-11 |
| | f. Resource and Type and Degree of Impacts | A-11 |
| | g. Sources of Information for Off-site Impacts | A-12 |
| | h. Reporting | A-13 |
| | 2. Reclamation Success | A-13 |
| | a. Land Form/Approximate Original Contour (AOC) ... | A-14 |
| | b. Land Capability | A-15 |
| | c. Hydrological Reclamation | A-16 |
| | d. Contemporaneous Reclamation | A-17 |
| | E. Performance Agreements/Evaluation Plans | A-18 |
| | F. Data Collection | A-20 |
| | G. Innovative State or Tribal Actions and Accomplishments | A-21 |
| | H. Regulatory Program Problems and Issues | A-21 |
| | I. Topic-Specific Oversight Reports | A-21 |
| | J. Evaluation Files | A-22 |

I. BACKGROUND AND PURPOSE

These procedures and guidelines provide guidance for the development of Performance Agreements/Evaluation Plans, the conduct of oversight activities, the preparation of Annual Evaluation Reports, public outreach, and the maintenance and availability of oversight documents.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires that programs be developed and implemented to regulate surface coal mining and reclamation operations. Section 201 of SMCRA, 30 U.S.C. 1211, established the Office of Surface Mining Reclamation and Enforcement (OSMRE) to administer and implement SMCRA. Among its responsibilities, OSMRE is charged with reviewing and approving State and Tribal programs for regulating surface coal mining and reclamation operations (SMCRA sections 503 and 710(j); 30 U.S.C. 1253 and 1300(j)); making those investigations and inspections necessary to insure compliance with SMCRA (SMCRA section 201(c)(1); 30 U.S.C. 1211(c)(1)); promoting the achievement of program goals and objectives (SMCRA section 102(g), 30 U.S.C. 1202(g)). OSMRE also ensures adherence to Federal, State, and Tribal statutory and regulatory requirements, and maintains minimum nationwide mining and reclamation standards.

SMCRA encourages States and Tribes to assume the primary responsibility (primacy) for regulating surface coal mining and reclamation operations within their borders and on Tribal lands. Once the Secretary of the Interior grants primacy to States and Tribes, the role of achieving many of the purposes of SMCRA lies primarily with them. Among other things, under SMCRA, States and Tribes that have been granted primacy must protect society and the environment from the adverse effects of coal mining, assuring that mining is not conducted where reclamation is not feasible and that lands are reclaimed in a contemporaneous manner. OSMRE's primary role when a State or tribe has primacy is to:

- monitor the State or Tribe and conduct inspections of surface coal mining and reclamation operations to ensure that the State or Tribe is effectively implementing, administering, maintaining, and enforcing its State or Tribal program,
- ensure the State or Tribe maintains its capability to fulfill SMCRA responsibilities,
- assist the State or Tribe in implementing its responsibilities,
- report on the evaluation of the State or Tribal program,
- work with States and Tribes to resolve, in a reasonable and timely manner, program and implementation issues identified through oversight,
- provide support to States and Tribes as requested and needed, and
- pursue corrective actions provided under SMCRA, applicable Federal regulations, and OSMRE policy if States or Tribes are not meeting program requirements.

This Directive fosters these purposes by establishing procedures and general criteria for evaluating the States' and Tribes' administration of their regulatory programs. In addition, it clarifies the respective roles and responsibilities of OSMRE offices, establishes procedures for OSMRE's annual evaluations, and sets forth format and content requirements for OSMRE's Annual Evaluation Reports on the status of State and Tribal program administration.

II. PROCEDURES

A. General Approach

OSMRE's Field Offices and Regions, in consultation and, to the extent possible, collaboration with each State and Tribe, will develop a State- or Tribe-specific Performance Agreement/Evaluation Plan tailored to the unique conditions of each State or Tribal program. Each Performance Agreement/Evaluation Plan will incorporate the National Measurement Elements (explained more fully below): off-site impacts and reclamation success. OSMRE will supplement its review of these two National Measurement Elements with other oversight activities that OSMRE may conduct in a State or on Indian lands, including inspections, national priority topic reviews, and other topic-specific oversight reviews that OSMRE may develop in the Performance Agreement/Evaluation Plan. The Performance Agreement/Evaluation Plan will identify these activities.

OSMRE's oversight reviews may include review of State- or Tribe-issued permits and associated documents (e.g., permit applications, monitoring reports) and the permitting process, including associated documents (e.g., findings, documentation supporting findings such as cumulative hydrologic impact assessments) and procedural policies and guidelines. Such reviews may be associated with evaluation of any other topic of oversight.

Two primary objectives of OSMRE's oversight of State and Tribal programs are to identify potential problems and their root cause and to assist States and Tribes in resolving any problems or other issues that are identified. OSMRE, in cooperation with States and Tribes, will focus resources on resolving such problems and issues. The Performance Agreement/Evaluation Plans will include any Action Plans directed at resolving Regulatory Program Problems.

OSMRE's oversight role will not duplicate the State's or Tribe's program implementation responsibilities. Oversight will not be process-driven. Instead, OSMRE's oversight will focus on the end-result success of the State or Tribal program in achieving the purposes of SMCRA. Also, it will focus on identifying the need for and providing financial, technical, or other program assistance to State and Tribes to strengthen their programs.

While OSMRE is committed to working with States and Tribes and other interested parties on oversight methods and evaluations, OSMRE will maintain its independence and objectivity in implementing its oversight responsibilities under SMCRA. OSMRE will take appropriate actions to resolve issues or Regulatory Program Problems identified in oversight in accordance with Directive REG-23, Corrective Actions for Regulatory Program Problems and Action Plans.

B. Outreach

Field Office Directors (FODs) will interact on a routine, periodic basis with relevant Federal, State, and Tribal agencies, State and local coal associations, citizens,

environmental organizations, and other groups to actively seek out and determine their areas of concern and suggestions, as well as to provide timely information about OSMRE activities that may interest such groups. To further this interaction, each Field Office will develop and conduct an outreach program within the States and Tribes to solicit comments from the public and interested groups regarding the oversight process, views on additional review topics for the Evaluation Year, and suggestions for improvements of future Annual Evaluation Reports. FODs are encouraged to work with their respective States and Tribes in developing such programs and in conducting such outreach jointly with the State or Tribe whenever possible. OSMRE may describe outreach efforts in Performance Agreement/Evaluation Plans.

1. Public Participation and Outreach

FODs will actively seek out, evaluate, and respond to public participation. At a minimum, each Field Office will provide an email address, phone number, and physical address where the public can provide input or seek information. This contact information will be in a highly visible location on the OSMRE website. The Field Office will acknowledge receipt and appreciation for public input in a timely manner. Additionally, information and data posted on the OSMRE website will include contact information that the public can use. FODS and RDs will work with the Office of Communications to maintain one national set of Frequently Asked Questions (FAQs) on the OSMRE website.

2. Information Accessibility

Each Field Office will, at a minimum, review annually all public information requests to identify which information and data are of interest to outside organizations. OSMRE will give every possible consideration to placing frequently requested information, documentation, and data on the appropriate area of the OSMRE website. Proactively providing information via outlets such as the Internet serves to not only keep OSMRE transparent but also reduces the resources expended responding to requests for documents under the Freedom of Information Act (FOIA) concerning routine information.

OSMRE will review in advance all information placed on the Internet to ensure that a layman can understand it; that it is free of technical jargon and is accessible to those with disabilities (i.e., compliant with section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794(d)); and that it complies with all Privacy Act of 1974, 5 U.S.C. 552a, requirements and other legal (e.g., confidentiality) requirements. Where technical data and information require precise terminology, the terminology will be fully defined and explained so that the public understands its meaning. OSMRE will provide documents involving State or Tribal input to the State or Tribe for review prior to posting on the OSMRE website. OSMRE will post all appropriate documents (specifically excluding the proposed Performance Agreement/Evaluation Plan) within 30 days after the document is finalized. OSMRE will not post internal working documents.

3. Outreach for Development of a Performance Agreement/Evaluation Plan

Each Field Office will conduct an outreach program within each State or on Indian lands to solicit comments from the public and interested parties regarding the oversight process, views on review topics for the Evaluation Year, and suggestions for improvements to future Annual Evaluation Reports. Field Offices will consider these comments in determining where OSMRE will focus its oversight resources and what aspects of the State or Tribal program it will review. The Field Office outreach effort will include the following elements, consistent with the Schedule for Outreach on the Performance Agreement/Evaluation Plan in section II.E. Performance Agreements/Evaluation Plans, below:

- Announcements of the opportunities to provide comments, views, or suggestions prior to the development of the Performance Agreement/Evaluation Plan, and on the proposed Performance Agreement/Evaluation Plan after its development;
- Field Office acknowledgement of receipt and appreciation for public input received; and
- Posting proposed and final Performance Agreement/Evaluation Plan on OSMRE's website.

OSMRE will make announcements on its website and by email. The Field Office is responsible for maintaining a current list of email addresses for all parties interested in a State's or Tribe's regulatory program. The Field Office may choose to use other appropriate outreach methods for a particular State or Tribe. The Field Office should base its selection of other outreach methods, such as letters and newspaper announcements, on its prior experience in communicating effectively with the public and interested parties for the particular States or Tribes. To ensure that OSMRE is reaching all public stakeholders, including those areas where the public may not have access to the Internet, OSMRE will also notify the public using other methods.

Announcements will include a description of how interested parties may discuss specific ideas and concerns with the Field Office.

C. Oversight Inspections

OSMRE uses a collaborative system of evaluation of State, Tribal, and Federal programmatic efforts designed to increase confidence in, and enhance achievement of, mutually shared environmental and public health and safety goals. OSMRE's oversight inspections should maximize the use of State, Tribal, and OSMRE resources with a goal of creating efficiency of effort between OSMRE and the States and Tribes in order to strengthen the performance of all parties. OSMRE will work to avoid duplication of effort and redundancy.

Inspections and site visits are an integral part of OSMRE's oversight activities. The Performance Agreement/Evaluation Plan should clearly describe what is expected to be accomplished through OSMRE inspections and site visits, so that both the State or Tribe and OSMRE staff understand the purposes of the inspections and site visits. Inspections

and site visits should be planned and designed to meet the overall objectives of the Field Office's oversight plan. Identifying the objectives of OSMRE oversight inspections and an inspection plan in the Performance Agreement/Evaluation Plan does not alter any of OSMRE's enforcement responsibilities under SMCRA or the Federal regulations.

While OSMRE will develop the Performance Agreement/Evaluation Plan in cooperation with the State or Tribal regulatory authority to the extent possible, it will follow the guidelines below regarding the types and numbers of inspections it will perform during the Evaluation Year in developing the inspection plan in the Performance Agreement/Evaluation Plan. OSMRE is responsible for selection of inspection sites and establishing the timing prior to inviting States and Tribes to participate in the oversight inspections. OSMRE will conduct inspections jointly with the RA, when practical and when the RA so requests. When the RA does not accompany OSMRE on its inspection, OSMRE will notify the RA of the results prior to completing the inspection report. The Performance Agreement/Evaluation Plan should not identify specific sites to be inspected. The Performance Agreement/Evaluation Plan should make use of the various types of oversight inspections available as appropriate and consistent with this section.

1. Determining the Target Number of Oversight Inspections for Each State or Tribe

The number of Inspectable Units (IUs) vary greatly in each State and on Indian lands, from as few as one IU to more than 1,800 IUs. Therefore, OSMRE will use a three-tiered method to determine the targeted number of annual oversight inspections. Field Offices should use the target number for developing the planned oversight inspection aspects of the Performance Agreement/Evaluation Plan for a given evaluation year.

For States and Tribes that have less than five IUs, OSMRE will inspect a target number of two IUs annually. For States and Tribes with five to 1,000 IUs, OSMRE will inspect a target number of 25 percent of the IUs annually. For States and Tribes with more than 1,000 IUs, OSMRE will use a sampling formula to determine its target number of oversight inspections. OSMRE adopted this formula to give a high level of statistical confidence in the data with the understanding that the statistical validity of the results will vary from year to year depending on the stratification of the sites selected and types of studies conducted. The formula that OSMRE will use to determine the target number of inspectable units to be inspected in States and on Indian lands with more than 1,000 IUs is:

$n = 384 / (1 + (383/N))$, where "n" is the sample size, and "N" is the total number of IUs.

Because a principle purpose of oversight inspections is to evaluate the overall effectiveness of a State or Tribal program, OSMRE will count all inspections that it conducts, including inspections conducted in response to a request for inspection (i.e., a citizen complaint), Federal enforcement inspections, and bond release inspections, toward the targeted numbers of inspections in the Performance Agreement/Evaluation Plan.

Although these inspections are to be included in the targeted number of oversight inspections, OSMRE will also track them separately for reporting purposes.

OSMRE will identify and describe the number of oversight inspections in the Performance Agreement/Evaluation Plan. Field Offices should only exceed the targeted number of inspections when they determine that additional inspections are necessary to monitor and evaluate the administration of approved State and Tribal programs. The RDs or FODs can increase the number of oversight inspections as necessary to address special issues or conditions in a State or on Tribal lands. However, to the extent the RDs or FODs increase the number of oversight inspections, the numbers will be increased by the fewest amount of additional inspections necessary to evaluate a State or Tribal program to meet the requirements of SMCRA and OSMRE's regulations. Field Offices should identify and explain any deviations from the above guidelines in the annual evaluation report.

2. Establishing the Ratio of Complete to Partial Inspections

Complete inspections are one of the most comprehensive tools that OSMRE has to effectively evaluate and monitor an individual State's or Tribe's regulatory program. Partial inspections are an efficient tool for conducting oversight inspections on a large number of sites for a given period of time compared to time-consuming complete inspections. Both types of inspections are very important and have great attributes as oversight evaluation tools.

At a minimum, OSMRE will conduct complete oversight inspections on 33 percent of the IUs selected for oversight inspections in each State or on Tribal lands. The FOD will determine the maximum number of complete oversight inspections and will delineate them in the Performance Agreement/Evaluation Plan. The RDs or FODs can increase the number of complete oversight inspections as necessary to address specific, identified issues in a State or on Tribal lands. To the extent the RDs or FODs increase the number of complete oversight inspections, the numbers will be increased by the fewest amount of additional complete inspections necessary to evaluate a State or Tribal program to meet the requirements of SMCRA and OSMRE's regulations.

3. Selecting Random and Focused Inspections

Focused inspections have historically been a better use of OSMRE's limited inspection resources. OSMRE can direct oversight activities to areas where there may be high levels of activity, public concern, or problems. Conversely, a random sample of IUs for oversight inspections provides a means to validate the effectiveness of the State or Tribal program in a readily apparent, unbiased manner. However, random selection of IUs for oversight inspections is reasonable only for States or Tribes that have a larger number of IUs (i.e., more than 1,000 IUs). For States and Tribes with less than 1,000 IUs, the Performance Agreement/Evaluation Plan will specify focused inspections. However, in States or on Indian lands with 1,000 or more IUs, the Performance Agreement/Evaluation Plan should identify a combination of focused and random oversight inspections. The final decision on the types of inspections that OSMRE will use for evaluation of any State or Tribal program will be at the discretion of the FOD.

4. Conducting Independent Inspections

Independent oversight inspections are permitted when OSMRE determines that such inspections are necessary and appropriate. When the State or Tribe does not accompany OSMRE on an inspection, OSMRE will notify the State or Tribe of the results prior to completing the inspection report.

D. National Measurement Elements and Reporting of End Results

To further the concept of reporting end-results and on-the-ground success, the Field Offices, using the guidance set forth below, will prepare findings from evaluations of the following National Measurement Elements, which OSMRE will generally report nationally in the OSMRE Annual Report. These evaluations will report the number and degree of off-site impacts; the number and percentage of inspectable units free of off-site impacts; and the number of acres that meet the bond release requirements and that the State or Tribe have released for the various phases of reclamation. OSMRE will prepare Topic-specific Oversight Reports (see Appendix A, II.I., below) for each National Measurement Element to provide specific information on how the measurements were carried out and reported. The National Measurement Elements are set forth below.

1. Off-site Impacts

OSMRE will evaluate and report on the effectiveness of State or Tribal programs in protecting the environment and public from off-site impacts resulting from surface coal mining and reclamation operations. The goal is for each inspectable unit to have minimal or no off-site impacts. The objective is that States, Tribes, and OSMRE direct efforts to continually decrease the occurrence of off-site impacts.

a. Purpose and Goal

A main purpose of SMCRA is to prevent, to the extent possible, the occurrence of off-site impacts in order to protect the public, property, and environment from the adverse impacts of mining outside of areas authorized for mining and reclamation activities. SMCRA and parallel State and Tribal program provisions require that impacts to areas outside the area authorized for mining and reclamation activities be minimized and in some cases prevented. The oversight strategy described here will measure the success in meeting this goal at each inspectable unit. In general, for each inspectable unit, this measurement provides for: identification and reporting of the number and degree of off-site impacts; determination of the causes of the impacts; and identification of areas where improvements may be made to lessen the number and degree of impacts. If evaluation of data related to off-site impacts indicates program- or implementation-related problems, OSMRE and the State or Tribe will implement changes, where possible, to prevent recurring impacts. Therefore, the objective of this measurement is that the State or Tribe and OSMRE direct efforts to minimize or prevent the occurrence of off-site impacts.

b. Definition of Off-site Impact

For purposes of this Directive, OSMRE will view an off-site impact as including anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources (people, land, water, structures) where that impact is intended to be minimized or prevented by SMCRA or the applicable State or Tribal program. Thus, to be considered as an off-site impact for National Measurement Element purposes, the applicable State or Tribal program is required to regulate or control the mining or reclamation activity or result of the activity causing an off-site impact. In addition, the impact on the resource should be substantiated as being related to a mining and reclamation activity and should be outside the area authorized by the permit for conducting mining and reclamation activities. An RA or OSMRE may identify off-site impacts within the permit boundary, if the impact is outside the area currently authorized by the permit for mining and reclamation activities. OSMRE should make any decision to treat a particular occurrence as an off-site impact in consultation with the RA.

For example, OSMRE will consider a blasting operation that exceeds the State or Tribal program's limits for vibration or air blast at a structure outside the permit area as an off-site impact when impacts to a resource (people, land, water, structure) are substantiated. OSMRE will not consider an exceedance of the State or Tribal program's limits for vibration or air blast at a structure outside the permit area as an off-site impact for National Measurement Element purposes when impacts to a resource are not substantiated.

Another example is when a mining operation disturbs a buffer zone within a permit area in violation of an approved program. In this case, OSMRE will consider this disturbance as an off-site impact for National Measurement Element purposes. A final example applies to regulatory programs that allow permitted land to be bonded at a later date, but prior to disturbance. If a mining operation causes a disturbance in the non-bonded portion of the permit area, OSMRE will consider this disturbance as an off-site impact for National Measurement Element purposes. As noted above, even though impacts of the types described in this paragraph (disturbance of a buffer zone within a permit area, and disturbance of a permitted area approved for mining but before a bond has been posted for that area) are actually within the overall permit area, they will be reported as off-site impacts under Table 5 of this Directive. If an RA requests it and provides the necessary information, OSMRE may also identify and address these impacts in a separate narrative in the annual evaluation report.

Although the great majority of off-site impacts will be events that constitute violations of the regulatory program, and the RA or OSMRE should cite them as such, there may be exceptions to this general rule. For example, a breached diversion ditch may have caused sediment to leave the permit area, causing an off-site impact. However, the RA may not have cited a violation because the operator may have corrected the violation prior to the inspection. OSMRE may still consider the fact pattern in this example as an off-site impact, but only where off-

site impacts can be substantiated. Other examples may exist when off-site impacts caused by a regulated activity are documented, but, for whatever reason, a violation was not cited. OSMRE will make a decision to treat any such occurrence as an off-site impact only after consultation with the RA.

Impacts related to planned mine subsidence are not considered off-site impacts if the subsidence occurs within the area authorized for mining. OSMRE may address impacts related to subsidence through other oversight processes. RAs and OSMRE should count unplanned impacts from underground mining activities as off-site impacts for National Measurement Element purposes.

c. Impacts Not Prohibited under the RA's Program

There are many impacts from mining and reclamation that are not regulated or controlled under SMCRA or State and Tribal programs (e.g., noise or visual impacts). There are also impacts that occur outside the permit even though a mine is in compliance with State or Tribal program provisions. One example is a sediment control structure that meets all design standards. A rainfall event that exceeds the design standard could cause the sediment control structure to discharge water that does not meet the effluent limits, resulting in off-site impacts. In this example, an off-site water quality impact occurs but, unless the condition is regulated by some aspect of the State or Tribal program other than the design standard, an off-site impact would not be recorded because all program requirements were met. Another example may be nuisance impacts such as those related to blasting or dust. Blasting operations may be in full compliance with the program although local residents are affected by noise or vibrations.

Although the main purpose of OSMRE oversight is to evaluate a State's or Tribe's effectiveness in implementing its approved program, opportunities may exist for a State or Tribe and OSMRE to agree to collect information on unregulated off-site impacts in addition to those regulated or controlled by the State or Tribal program in compliance with the Paperwork Reduction Act. OSMRE may use such information to identify provisions of State, Tribal, and Federal standards where improvements may be made that would further minimize off-site impacts. Although this Directive does not require information on these types of impacts and these types of impacts should not be reported in Table 5, Off-site Impacts, OSMRE is encouraged to work with States and Tribes to develop acceptable methods for considering this type of information. In cases when such information is collected, OSMRE should report the results in a topic-specific report on off-site impacts and summarize the information, as appropriate, in the annual report.

d. Impacts on Bond Forfeiture Sites

Sites that are not fully reclaimed to program standards (even after all forfeiture funds are expended) will remain on the inspectable units list in accordance with Directive INE-29 and be reviewed for off-site impacts. OSMRE will report off-site impacts identified on bond forfeiture sites separately in Table 5, and will add them

to the total off-site impacts for all inspectable units. OSMRE will address these impacts in a separate report narrative. OSMRE may identify such impacts either through special oversight studies or through routine measurement of off-site impacts. Table 5 should include all off-site impacts identified on bond forfeiture sites during the Evaluation Year. OSMRE should discuss off-site impacts that were identified and reported in prior years in a report narrative so that new impacts can be distinguished from impacts that continue to exist but were reported in prior years. OSMRE should properly characterize the magnitude of off-site impacts, especially those that continue from year to year.

e. Positive Impacts

OSMRE should consider and report documented positive impacts (e.g., improvement in water quality due to reclamation of bond forfeiture sites) in section V.A., Off-site Impacts, of the Annual Evaluation Report; however, OSMRE should not report positive impacts in Table 5.

f. Resources and Type and Degree of Impacts

Resources that may be affected during mining and reclamation operations include land, water, people, and structures. Water resources include surface water and groundwater quality and quantity. Fish and wildlife resources that may be impacted are included as part of water and land resources. The types of impacts that may affect these resources include, but are not limited to, blasting, land stability, and hydrologic impacts; unauthorized encroachments onto protected or non-permitted areas; and other impacts.

The off-site information to be collected, evaluated, and reported is the number of off-site impacts and the degree of impact. Additional information that should be gathered about each impact is the type of impact and the resource affected. Each impact may affect more than one resource, i.e., a blasting impact may affect both land and people.

Degrees of impacts are classified as minor, moderate, or major. General guidelines for assessing the degree of impact are:

Minor

2. Small amount of disturbance outside of permit or authorized area;
3. Small amount of sediment, flyrock, or erosion outside permit or authorized area;
4. Low volume or short duration water discharge that marginally exceeds effluent limits and has a marginally negative impact on receiving stream water quality;
5. Impact does not interfere with land use;
6. Impact does not jeopardize public safety; and

7. Impact does not cause damage to uncontrolled structures or restricted areas.

Moderate

8. Anything more than minor but less than major impact.

Major

9. Large amount of disturbance outside of permit or authorized area;
10. Large amount of sediment, fly rock, or erosion outside permit or authorized area;
11. High volume or long duration water discharge of poor quality enters a high quality stream;
12. Impact interferes with land use;
13. Impact jeopardizes public safety or causes personal injury;
14. Impact causes damage to uncontrolled structures or restricted areas;
15. Any impact caused by mining without a permit; or
16. Stream dewatering that is not repaired or is an unplanned event.

g. Sources of Information for Off-site Impacts

One overall objective of this measurement is to determine, for each inspectable unit, whether off-site impacts occurred. The primary source of information for identifying off-site impacts should be the State or Tribal inspection process. Existing State or Tribal inspection procedures should result in the identification of off-site impacts for each inspectable unit. These determinations provide effective data for use by the State or Tribe and OSMRE to determine whether off-site impacts occurred. State or Tribal enforcement actions, citizen complaint files, civil penalty assessment data, and other information made available to OSMRE may also be considered.

Performance Agreements/Evaluation Plans should identify how States or Tribes will collect and provide information to OSMRE on all off-site impacts that are identified in the State or Tribal inspection process. OSMRE offices will include some level of its own independent evaluation or joint evaluation with the States and Tribes and not rely solely on information that the States and Tribes provide. Such evaluation can consider Federal inspections, OSMRE Ten-Day notices, citizen complaints (only alleged impacts that are substantiated), topical studies, and information from other State, Tribal, and Federal environmental regulatory agencies. OSMRE will consider a variety of sources to provide a credible evaluation of the off-site impacts in each State or on Tribal lands. OSMRE will explain the sources of information and the basis used to identify and report the number of off-site impacts in the narrative description of the topic-specific report on

off-site impacts.

h. Reporting

OSMRE will prepare an Off-site Impact Oversight Report for each State and Tribe. This report is independent from the Annual Evaluation Report and will be used as supporting documentation for the Annual Evaluation Report. The Off-site Impact Oversight Report will include:

- the number and percentage of inspectable units free of off-site impacts;
- the number, type, and degree of identified off-site impacts and the resources affected;
- detailed information on data collection and analysis;
- a discussion of any conclusion on the effectiveness of the State or Tribal program in minimizing and/or preventing off-site impacts and where improvements may be made to lessen the number and degree of impacts;
- a general discussion of the root causes of identified off-site impacts (i.e., improper permitting action, improper design, construction and/or maintenance, operator negligence, etc.);
- a discussion of any measures that have been or will be taken to address program or implementation deficiencies identified through a trend analysis with the goal of reducing the number and degree of off-site impacts; and
- a separate discussion addressing off-site impacts at bond forfeiture sites including a review of previously identified off-site impacts that still exist, with special emphasis on the degree of impact of these recurring off-site impacts.

Report off-site impacts data in Table 5, Off-site Impacts, in Appendix 1 of the Annual Evaluation Report. The Annual Evaluation Report should also contain a narrative summary of the findings from the overall evaluation with proper reference to the data in Table 5.

In general, OSMRE will use Table 5, Off-site Impacts, to report off-site impacts that it identifies throughout the Evaluation Year. Table 5 provides a separate section for reporting off-site impacts related to bond forfeiture sites. Information concerning impacts that are not prohibited by the State or Tribal program and SMCRA, impacts that are not regulated under the State or Tribal program, and positive impacts should not be included in Table 5 information. OSMRE should describe all such impacts, when evaluated, in the narrative description of the off-site impact evaluation. Information reported in Table 5 will not stand alone and will always be fully explained by a supporting narrative.

2. Reclamation Success

OSMRE will evaluate and report on the effectiveness of State and Tribal programs in ensuring successful reclamation on lands affected by surface coal mining operations.

Success will be determined based on the number of acres that meet the bond release standards and have been released by the State or Tribe. In addition to the nationwide information reported, Field Offices, States, and Tribes may conduct specific evaluations and report on individual performance standards.

Except as otherwise specified below, OSMRE will collect bond release information to measure program performance in the following areas:

- Land form/approximate original contour;
- Land capability;
- Hydrologic reclamation; and
- Contemporaneous reclamation.

Existing bond release systems and forms should be used to the extent possible to evaluate reclamation success. However, States and Tribes and OSMRE will work together to attain procedures over time that will capture bond release data necessary to measure program performance. OSMRE will, where appropriate, and when requested by the RA and agreed to by OSMRE, evaluate alternate measurements of Reclamation Success.

After the State or Tribe and OSMRE have agreed, to the extent possible, on interpretations, what to report, and how to report it, OSMRE will make reasonable efforts to verify the accuracy of State or Tribal data using tools established in the Performance Agreement/Evaluation Plan or as otherwise negotiated. Data verification tools to be used include but are not limited to OSMRE oversight inspections, OSMRE participation in State and Tribal bond release inspections (all or a sample), special studies, or other methods mutually agreed upon by the State or Tribe and OSMRE that take into account the unique characteristics of the State or Tribe and its program. Once the data collection system and verification procedures have been established, the acres released from bond will represent accomplishment of specific on-the-ground reclamation.

OSMRE will prepare an oversight evaluation report for each reclamation success evaluation conducted for each State or Tribe. This report will include detailed information on the collection and analysis of data, as well as the verification of the data, and will draw a conclusion concerning the effectiveness of the State or Tribal program in ensuring successful reclamation of mined lands. OSMRE will summarize information from the findings report in the Annual Evaluation Report for the State or Tribe.

In evaluating the effectiveness of State and Tribal programs in ensuring reclamation success, there are various reviews OSMRE may conduct in each of the four areas noted below. The Field Office should select one or more of the measurements for review under each of the four reclamation success standards (land form/AOC, land capability, hydrologic reclamation, and contemporaneous reclamation) to determine if available information reflects that reclamation is being successfully accomplished and within a timely manner as required by the State or Tribal program. The guidance for each of these areas follows:

- a. Land Form/Approximate Original Contour (AOC)

MEASUREMENT: OSMRE will measure AOC achievement by evaluating the acres of Phase I bond released.

Due to differences in topography, geography, geology, and land forms in the coal producing States and Tribes, it is necessary that OSMRE and the State or Tribe concur on an accepted interpretation of AOC for purposes of this Directive. When OSMRE and the State or Tribe establish the AOC interpretation for a State or Tribe, the State or Tribe and OSMRE will document it in a mutually acceptable manner. OSMRE will document acreage disturbed by mining activities that is released from Phase I bond liability as having achieved AOC.

ALTERNATE MEASUREMENT: OSMRE may measure AOC achievement by evaluating acres backfilled, and graded to final contour, with drainage controlled.

Where the RA requests and OSMRE agrees, OSMRE may use acres backfilled, graded to the final contour and with drainage controlled, all in accordance with the approved reclamation plan, as a surrogate measure of AOC accomplishment.

b. Land Capability

There are several measurements that OSMRE may analyze to demonstrate the reestablishment of land capability on mined areas. These measurements and the timing of each measurement are discussed below.

MEASUREMENT: OSMRE will measure proper replacement of soil resources by evaluating the acres of Phase II bond release.

OSMRE may assess land capability by evaluating the acres where topsoil, subsoil, or other suitable materials have been properly redistributed at the time of Phase II bond release. For those States or Tribes where soil replacement is a Phase I reclamation activity, this measurement should be conducted at the time of Phase I bond release. Because it has been established and documented by inspection, the acreage released from the applicable phase of bond liability can be documented as having achieved soil replacement.

MEASUREMENT: OSMRE will measure vegetation stability by evaluating the acres of Phase II bond release.

OSMRE may assess land capability by evaluating the acres for which vegetative cover or other erosion control techniques have adequately stabilized the surface from erosion at the time of Phase II bond release. Because it has been established and documented by inspection, the acreage released from Phase II bond liability can be documented as having achieved erosion stability.

MEASUREMENT: OSMRE will measure achievement of postmining land uses by evaluating the acres of Phase III bond release.

OSMRE may assess land capability by evaluating the acres for which approved postmining land uses have been achieved at the time of Phase III bond release. Achievement of postmining land uses will be measured by the acreage of each land use type released from Phase III bond liability, i.e., cropland, pasture, forest, water, etc., and the acreage will be documented and reported. Because it has been established and documented by inspection, the acreage released from Phase III bond liability can be documented as having achieved the approved post-mining land uses.

MEASUREMENT: OSMRE will measure successful revegetation by evaluating the acres of Phase III bond release.

OSMRE may assess land capability by evaluating the acres for which revegetation has been successfully demonstrated at the time of Phase III bond release. The bond release will document the ground cover, yields, or stems per acre, as appropriate, for the land use.

c. Hydrologic Reclamation

OSMRE may assess several measurements to evaluate the reestablishment of the hydrologic balance and successful hydrologic reclamation on mined areas. Listed below are some suggested measurements and their timing. OSMRE should periodically evaluate mine subsidence and impacts to water supplies to determine the success of the State or Tribal program in achieving timely restoration and repair or replacement of water supplies affected by mining and restoration of other resources impacted by mine subsidence.

MEASUREMENT: OSMRE will measure achievement of surface water impoundment quality and quantity restoration by evaluating the acres of Phase III bond release.

OSMRE may measure surface water quality and quantity restoration in terms of acres of water impoundments released from bond liability. Bond release will document that water quality meets surface water quality standards and water quantity is adequate for its intended use. Because it has been established and documented by inspection, the acreage released from Phase III bond liability can be documented as having achieved restoration of this aspect of surface water quality and quantity.

MEASUREMENT: OSMRE will measure achievement of groundwater recharge capacity and groundwater quantity and quality restoration by evaluating the acres of Phase III bond release.

OSMRE will measure groundwater recharge, quality, and quantity in terms of acreage released from Phase III bond liability. The State or Tribe, in the Phase III bond release documents, determines whether groundwater recharge and restoration

of the hydrologic balance has been achieved. Provided the State or Tribe has determined and documented that groundwater quality, quantity, and recharge capacity have been protected, these documents could be used to measure the achievement of this goal.

MEASUREMENT: OSMRE will measure achievement of surface water quality and quantity restoration by evaluating acres of Phase III bond release.

OSMRE will measure surface water quality and quantity restoration through a comparison of the pre-mining water quality and quantity to the postmining water quality and quantity at the time of Phase III bond release. Bond release will document that the water quality and quantity leaving the mine site meets the applicable standards and is comparable to or better than the pre-mining quality and quantity. Because it has been established and documented by inspection, the acreage released from Phase III bond liability can be considered as having achieved restoration of this aspect of surface water quality and quantity.

MEASUREMENT: Mitigating the impacts to streams.

The intent of this measurement is to provide an overall picture on how well fully functional streams are restored or replaced by mining and reclamation in the State or on Tribal lands. Standard measurements have not been specified, but each office is required to periodically evaluate the implementation of stream protection measures by States and Tribes. In order to assess the success of stream protection measures, data may be collected on the length of stream permanently or temporarily disturbed by mining activities and the stream length restored or created within or off of the permit area. This information may be available at the District Corps of Engineers office or a system may need to be developed to collect this information.

d. Contemporaneous Reclamation

Contemporaneous reclamation should be periodically evaluated by determining if on-the-ground reclamation is following the reclamation plan approved in the permits, specifically focusing on applicable performance standards of the State or Tribal program, the detailed timetable for the major steps in the reclamation plan (i.e., backfilling and grading, topsoil redistribution, planting and seeding), and the map showing the sequence of reclamation.

Although not reported in Table 6, Surface Coal Mining and Reclamation Activity, contemporaneous reclamation on-the-ground is an important purpose of SMCRA “to assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations.” It provides an overall perspective of how successfully reclamation is staying current with mining in a State or on Tribal lands.

MEASUREMENT: OSMRE may measure timeliness of reclamation by evaluating the timeliness of Phase I, Phase II, and Phase III bond releases.

The intent of this measurement is to provide an overall general picture of how successfully reclamation is staying current with mining in the State or on Indian lands. It is recognized that some States or Tribes may not have the capability to collect data that provides a complete status of the timing of mining and reclamation at this time. In order to collect this data, a system to collect a baseline of the number of acres affected by mining activities and released from bond each year is needed.

However, because not all States or Tribes collect disturbed acreage data, such baseline information may not be available, or, if available, may not be complete. Thus, the number of acres that are bonded each year will be used to provide a close approximation of the number of disturbed acres until it can be established that all States and Tribes collect disturbed acreage data. However, once a baseline for disturbed acreage data has been established and the State or Tribe is collecting such information annually, the State or Tribe should continue to collect the number of acres bonded each year for comparative purposes.

The State or Tribe and OSMRE, as part of the Performance Agreement/Evaluation Plan, will plan and implement the collection of data to provide some measurement of this program area. OSMRE should consider the information provided to complete Table 6, Surface Coal Mining and Reclamation Activity, in the Annual Evaluation Reports, that summarizes mining and reclamation activity, as a source for this measurement.

ALTERNATE MEASUREMENT: OSMRE may measure contemporaneous reclamation by comparing the rate at which lands are being backfilled, regraded to final contour, drainage controlled, soiled, and seeded with vegetation reestablished, to the rate of disturbance.

In some States, a general measurement for contemporaneous reclamation is a comparison of the rate at which lands are being permanently reclaimed (backfilled, re-graded to final contour, drainage controlled, soiled, and seeded with vegetation types reestablished that support the postmining land use) to the rate of disturbance. Where requested by the RA, and agreed to by OSMRE, OSMRE will look at the total area where reclamation requirements have been met and compare it to the total disturbed acres with the long-term facility areas subtracted.

E. Performance Agreements/Evaluation Plans

OSMRE's Field Offices and Regions, in collaboration with each State and Tribe, to the extent possible, will develop a State-/Tribe-specific Performance Agreement/Evaluation Plan tailored to the unique conditions of each State or Tribal program. OSMRE and the States and Tribes are encouraged to develop Performance Agreement/Evaluation Plans covering more than one Evaluation Year because the process is continuous and not necessarily limited to one year.

Field Offices can append detailed plans for national priority reviews (see Appendix B, II.E.VI., below) and/or topic-specific evaluations to be conducted in specific Evaluation Years to multi-year Performance Agreement/Evaluation Plans.

The format of each Performance Agreement/Evaluation Plan is left to the discretion of the individual Field Offices and States and Tribes to determine; however, the information contained within the Performance Agreement/Evaluation Plan will include the following:

- Program Evaluation goals and the plans to achieve those goals in order to give all stakeholders a clear understanding of what OSMRE and the State or Tribe plan to do;
- State or Tribe involvement in the oversight evaluation process;
- The National Measurement Elements, including details of each review for:
 - Off-site Impacts, and
 - Reclamation Success;
- Other oversight activities that OSMRE may conduct in a State or on Indian lands, including national priority reviews and focused State-/Tribe-specific permitting and enforcement reviews, with a general discussion of each review;
- Inspection plans for the Evaluation Year, including the following information:
 - A description of what OSMRE expects to accomplish, so that both the State or Tribe and OSMRE staff understand the purpose of the inspections;
 - Identification of the:
 - Number and type (joint, partial, complete, etc.) of OSMRE oversight inspections, and
 - Method of selecting mines to be inspected (random or focused);
- The Field Office's plans to assist the State or Tribe in the resolution of any identified problems;
- Methods for resolving Regulatory Program Problems and other issues identified in previous evaluations, including uncompleted Action Plans, which will be appended to the Performance Agreement/Evaluation Plan;
- Statement as to how OSMRE and the State or Tribe plan to address public comments/input and how outreach should be conducted during the year;
- Technical or programmatic assistance that OSMRE expects to provide to the State or Tribe, and expected outcomes of the assistance;
- Core program data that the State or Tribe will provide to OSMRE and the mutually-agreed format for this data;
- Planned internal reviews of the State or Tribal program that the State or Tribe provides to OSMRE; and
- Any other identified requirements that would promote full program performance.

Schedule for Outreach on the Performance Agreement/Evaluation Plan

| Date | Outreach Activity |
|--------------------|---|
| March 1 | Announce opening of a 30-day period for interested parties to comment on oversight and provide suggestions for potential oversight review topics, including the opportunity for discussions with the Field Office |
| March 1 – March 30 | Opportunity for interested parties to comment on oversight and provide suggestions for potential oversight review topics |
| April 15 | Draft Performance Agreement/Evaluation Plan developed and sent to the State or Tribe for their review and comments |
| April 30 | As appropriate, incorporate State or Tribe comments into the draft Performance Agreement/Evaluation Plan |
| May 1 | Announce the opportunity for interested parties to comment on the proposed Performance Agreement/Evaluation Plan, including the opportunity for discussions with the Field Office on proposed oversight plans |
| May 1 – May 15 | Opportunity for interested parties to comment and request discussions with the Field Office |
| May 15 | Close of comment period/last day for public discussions with the Field Office |
| May 15 – June 30 | In conjunction with the State or Tribe, finalize Performance Agreements/Evaluation |
| July 14 | Post final Performance Agreement/Evaluation Plans on OSMRE’s website |

F. Data Collection

OSMRE’s database, Regulatory Program Data for States and Tribes (DST), is the sole repository and the official source of the data reported in Annual Evaluation Reports and in OSMRE’s Annual Report (REG-8 data). Likewise, summary data for Federal programs and the Indian lands program that are reported in OSMRE’s Annual Report, as appropriate, can be derived from the DST. FODs are responsible for ensuring that they timely enter the data for their States and Tribes in the DST and that the data are accurate and complete.

To the extent practical, OSMRE and the State or Tribe, as a part of a Performance Agreement/Evaluation Plan, will use DST to obtain the applicable core data for analysis and characterization of regulatory programs, and OSMRE will allow States and Tribes to develop guidelines for maintaining, updating, and verifying the data in a timely manner. OSMRE will also look to maximize consistency, minimize duplicative efforts, and reduce document review effort and continue to develop a shared understanding of the data among OSMRE, the States and Tribes.

Field Office staff may work cooperatively with States and Tribes to obtain REG-8 data, but OSMRE should take reasonable steps to verify the accuracy of the data. The relevant OSMRE staff, from among Field Office staff who collect and enter data into the DST, FODs, and RDs, will validate and verify the data and, pursuant to Department of the Interior Validation and Verification policy and procedures, certify:

- The data that are being used are appropriate for the outcome that is being pursued (i.e., the data are valid);
- Data collection, analysis, and reporting standards and procedures are in place and people are properly trained;
- Data entry methods are established, data are verified, data are available when needed, data entry staff are trained;
- Data security protocols are in place and effective;
- Data accuracy limits are defined;
- Use of externally controlled data is documented;
- Accountability for data accuracy exists in the employee's performance standards;
- Responsible officials certify that procedures were followed for each reporting period; and
- Responsible officials certify that data accuracy has been checked for each reporting period.

G. Innovative State or Tribal Actions and Accomplishments

OSMRE will place emphasis on recognition of innovative State or Tribal approaches to managerial efficiency, problem resolution, environmental protection, and extraordinary achievements in program implementation.

H. Regulatory Program Problems and Issues

OSMRE reports Regulatory Program Problems and Issues in Section VII of the Annual Evaluation Report. Appendix 1, Table 14, Status of Action Plans, documents the status of Action Plans developed for resolution of Regulatory Program Problems. Directive REG-23, Corrective Actions for Regulatory Program Problems and Action Plans, provides guidance for actions that OSMRE may take to correct Regulatory Program Problems and other issues, including the Action Plan process. OSMRE should also report resolution of problems or issues, including incremental improvements toward such resolution.

I. Topic-Specific Oversight Reports

A Performance Agreement/Evaluation Plan may identify a specific program area or topic for evaluation and reporting. Whenever the Field Office completes the topical evaluation, it will prepare a Topic-specific Oversight Report independent of the Annual Evaluation Report. Although there is no specified format or style for such reports, the Field Office should address the following information in the report:

- The program area or topic reviewed and why it was selected;
- The scope and method of review;

- The dates of the oversight activity and the period for which State or Tribal actions and documents were evaluated;
- All findings, both positive and negative;
- Facts supporting the findings;
- A list of all specific permits, mine sites, or State or Tribal actions reviewed;
- The actual or potential impact or significance of any deficiencies identified;
- A clear description of any corrective action required or recommended, if problems or potential problems are identified, and whether the problem constitutes a Regulatory Program Problem; and
- Whether OSMRE's technical or administrative assistance is appropriate.

Records of the evaluation will identify all OSMRE and State or Tribal personnel involved in the review. If OSMRE personnel outside the Field Office participated in the review, they will be afforded an opportunity to review and comment on the report in draft form.

The Field Office will send a draft report to the State or Tribe with a request for comments and, if appropriate, will include a schedule of actions that the State or Tribe need to take to address any issues or resolve any problems. The Field Office will provide a final report, developed after consideration of State or Tribal comments, to the State or Tribe.

The Field Office will include final reports in the Evaluation File.

J. Evaluation Files

The Field Office will maintain a public review file for oversight activities conducted in each Evaluation Year on an ongoing basis (evaluation file). The Field Office will maintain an evaluation file that is independent of any administrative record (see Directive INF-2). The Field Office will keep the evaluation file current and will include all documents pertinent to the Evaluation Year regardless of the date of preparation or receipt of documents. In some cases, this may require that a document (e.g., a multi-year Performance Agreement/Evaluation Plan) be duplicated and placed in several evaluation files (a copy in each evaluation file to which the document pertains). The evaluation file for each Evaluation Year will contain the following items:

- National/regional oversight guidance and format documents and revisions and clarifications thereof (e.g., this Directive);
- The Performance Agreement/Evaluation Plan between OSMRE and the State or Tribe;
- A list of the oversight inspections conducted, including the type of inspection, type of facility, and its activity status;
- All final topic-specific oversight reports prepared for the Evaluation Year (i.e., Oversight Reports on Off-site Impacts, Reclamation Success, National Priority Review topics, other State-/Tribe-program specific oversight topics reviewed during the Evaluation Year);
- Any data summaries used to prepare the findings in the Annual Evaluation Report;
- Action Plans in effect during the Evaluation Year;

- OSMRE-State/Tribal meeting summaries and substantive correspondence concerning evaluation techniques, topics, schedules, and findings;
- The final Annual Evaluation Report provided to the State or Tribe and all State or Tribe comments thereon;
- Public comments, complaints, or observations pertaining to the Performance Agreement/Evaluation Plan, Annual Evaluation Report, or the evaluation process;
- Summaries of public meetings held concerning the oversight process;
- A summary of citizen complaints received by OSMRE, including the number received, status, and the disposition;
- A list of inspectable units, updated quarterly; and
- An End-of-Evaluation-Year summary of OSMRE oversight inspections completed during the Evaluation Year, including the date, permit number, permittee, mine name, county, type of facility, and activity status.

The evaluation file will not include the following items:

- Working papers;
- State or Tribal and Federal inspection reports;
- Raw, unorganized data;
- Protected Privacy Act data;
- Confidential permit application documents, other confidential information, or any other information legally protected from disclosure;
- Grant reports and related documents (although the evaluation file should include a note explaining where and how these documents may be reviewed);
- Briefing papers for OSMRE management; or
- Draft reports.

The Field Office will make evaluation files physically available for public review during normal business hours in the same manner as administrative record files (see Directive INF-2). Field Offices will provide single copies of the final Annual Evaluation Report and final Topic-specific Oversight Reports free of charge upon request. Requests for copies of other evaluation file documents may be processed in accordance with Directive INF-3 (Freedom of Information Act (FOIA) procedures) if the FOD determines that the request imposes a significant burden on Field Office resources. Currently, selected oversight documents are available for review on ODocs, which is an electronic database, accessible through OSMRE's website, with a built-in search capability.

**APPENDIX B
PROCEDURES AND GUIDELINES FOR OVERSIGHT AND REPORTING**

The information below contains formatting and content guidance for preparation of Annual Evaluation Reports.

CONTENTS

| | | |
|-----|--|------|
| I. | REPORTING REQUIREMENTS FOR ANNUAL REPORTS | B-2 |
| II. | INSTRUCTIONS AND TEMPLATES | B-2 |
| | A. Cover | B-3 |
| | B. Title Page | B-3 |
| | C. Evaluation Year Executive Summary | B-5 |
| | D. Table of Contents | B-5 |
| | E. Report Sections | B-7 |
| | I. Introduction | B-7 |
| | II. Overview of the Coal Mining Industry in the State or on Tribal Lands | B-7 |
| | III. Overview of Public Participation and Outreach Efforts | B-8 |
| | IV. Major Accomplishments and Innovations | B-8 |
| | V. Success in Achieving the Purposes of SMCRA | B-9 |
| | A. Offsite Impacts | B-9 |
| | B. Reclamation Success | B-10 |
| | VI. National Priority and General Oversight Topic Reviews | B-10 |
| | VII. Regulatory Program Problems and Issues | B-10 |
| | VIII. OSMRE Assistance | B-10 |
| | Appendix 1: Summary of Core Data to Characterize the Regulatory Program | B-11 |
| | Appendix 2: State’s or Tribe’s Comments on the Annual Evaluation Report | B-13 |

I. REPORTING REQUIREMENTS FOR ANNUAL REPORTS

The FOD will prepare an Annual Evaluation Report for each State or Tribe within his or her area of responsibility. The target date for completion of a final report, including all changes as a result of comments from all reviewers, is 60 days after the end of the Evaluation Year. The intent is to have the Annual Evaluation Reports finalized well before the start of the next Fiscal Year, so that information can be used for Congressional hearings and to provide information to the Office of Communications for inclusion in OSMRE's Annual Report. The following is a suggested timetable for finalizing Annual Evaluation Reports:

1. The draft Annual Evaluation Report should be completed and forwarded within 30 days after the end of the Evaluation Year to the State or Tribe for review and comment (i.e., the end of July).
2. The State or Tribe will be provided a minimum 15-day comment period, which can be extended upon request (comments due in mid-August).
3. Within 10 days after receipt of the State's or Tribe's comments, any necessary revisions to the report should be completed (late August); the State's or Tribe's comments, followed by a summary of the FOD's disposition of those comments, will be appended to the report as Appendix 3.
4. If the report is substantively revised, the State or Tribe will be allowed up to five days to provide additional comments on the revised report (end of August). The State's or Tribe's comments on the revised report will be appended to the report in place of the initial comments unless the new comments reference the previous comments.
5. Once the FOD determines that all changes resulting from a State's or Tribe's comments have been completed, the FOD will brief and consult with the RD on the final report. The FOD will then finalize the report, have a copy of the report posted on OSMRE's website for public viewing, and notify interested parties, including the Director, Regional Director, Office of Communications, and other OSMRE units of the availability of the reports on OSMRE's website (early-September). Hard copies will be made available upon request.
6. To promote dissemination of oversight information, the FOD will contact interested parties by email to notify them that OSMRE has posted the report on the OSMRE website and/or provide electronic or paper copies of the report to States or Tribes and other interested parties.

II. INSTRUCTIONS AND TEMPLATES

The FOD will prepare the Annual Evaluation Reports in accordance with the instructions and templates provided on the following pages. The FOD will take care to ensure that dates in the text of the report and the tables reflect the proper Evaluation Year. Use acronyms minimally throughout the report. Use photographs, tables, and graphs in the report to illustrate and supplement the report's content and findings.

An Annual Evaluation Report prepared under this Directive for a regulatory program may be combined with the Annual Evaluation Report on a State's or Tribe's abandoned mine land (AML) program prepared in accordance with Directive AML-22, Evaluation of State/Tribe Abandoned Mine Land Programs. If the reports are combined, the applicable guidelines for preparation of both reports should be followed to the extent possible.

A. Cover

If a photograph is used on the cover of the Annual Evaluation Report, any text in the Cover should be visible and easily read. The text should include the full names of OSMRE (i.e., Office of Surface Mining Reclamation and Enforcement) and the State or Tribal regulatory authority along with the Evaluation Year and the Field Office responsible for the review.

B. Title Page

The title page of the report should follow the template on the next page.

Template of Title Page for Annual Evaluation Reports:

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory [and Abandoned Mine Land] Program[s] Administered by

[State/Tribal Regulatory Authority or Authorities]

of

[STATE or TRIBE (ALL CAPS)]

for

Evaluation Year [YYYY]

July 1, [YYYY] to June 30, [YYYY]

Prepared by

[Name of Field Office conducting evaluation]

[Month YYYY (when final)]

C. Evaluation Year Executive Summary

Instructions: Under a page heading, “**Executive Summary**,” insert topics of interest to the reader for the State or Tribal program during the Evaluation Year – this should summarize the data and narrative that is contained in later sections of the report. This section should read as a “story.” Omit all technical jargon. Keep acronyms to a minimum, only using acronyms for OSMRE or the State agency or agencies). Use the following information in this section:

- Indicate the Evaluation Year for the review and list the State agency or agencies being evaluated.
- Describe outreach efforts and other opportunities for public input such as review of draft evaluations.
- Include top stories from the Evaluation Year: describe accomplishments and/or advancements made by OSMRE or the State or Tribe. Include AML accomplishments as well as regulatory program efforts if the AML evaluation report is combined with the regulatory program Annual Evaluation Report.
- Summarize the outcome of reviews of the National Measurement Elements, Off-site Impacts and Reclamation Success, and any National Priority Topics for the Evaluation Year.
- Summarize the outcome of other topic-specific reviews selected by the Field Office for the Evaluation Year. Include AML as well as regulatory program reviews if the AML evaluation report is combined with the regulatory program Annual Evaluation Report.
- Summarize the resolution of Regulatory Program Problems and issues and the status of problems pending at the end of the Evaluation Year.
- Summarize OSMRE grants and significant technical assistance OSMRE provides during the Evaluation Year. Include AML as well as regulatory program grants and significant technical assistance if the AML evaluation report is combined with the regulatory program Annual Evaluation Report.

D. Table of Contents

Use the following template for preparing the Table of Contents of the Annual Evaluation Report:

TABLE OF CONTENTS (Contents may be adjusted to report AML activities at the FOD's discretion.)

- I. Introduction
- II. Overview of the Coal Mining Industry [in the State or on Indian lands]
- III. Overview of Public Participation and Outreach Efforts
- IV. Major Accomplishments and Innovations
- V. Success in Achieving the Purposes of SMCRA
 - A. Off-site Impacts
 - B. Reclamation Success
- VI. National Priority and General Oversight Topic Reviews
- VII. Regulatory Program Problems and Issues
- VIII. OSMRE Assistance
- Appendix 1 Summary of Core Data to Characterize the Program
- Appendix 2 [State's or Tribe's] Comments on the Report

E. Report Sections

I. Introduction

Instructions: Insert the following text into this section of the report, substituting State- State- or Tribe-specific information where so indicated.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSMRE) in the Department of the Interior. SMCRA provides authority to OSMRE to oversee the implementation of and provide Federal funding for the State and Tribal regulatory programs that the Secretary of the Interior has approved as meeting the minimum standards specified in SMCRA. This report contains summary information regarding the [State or Tribal] program and the effectiveness of the [State or Tribal] program in meeting applicable purposes of SMCRA as specified in SMCRA section 102, 30 U.S.C. 1202. This report covers the period of July 1, [YYYY] to June 30, [YYYY]. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the OSMRE [Office Name, Address, Phone Number, and name and email address of contact person].

(Adjust this introduction to report AML activities at the FOD's discretion.)

This report uses the following acronyms:

OSMRE: Office of Surface Mining Reclamation and Enforcement

SMCRA: Surface Mining Control and Reclamation Act of 1977

[List alphabetically all acronyms used in the report and their definitions]

II. Overview of the Coal Mining Industry in the State or on Indian Lands

Instructions: To provide a context or characterization for the reader to understand the significance of coal mining within the State or on Indian lands, prepare a short narrative setting forth general information on coal mining in the State or on Indian lands considering the following topics and other appropriate information:

- Types of mining (surface and underground, differentiated by longwall, conventional, or in-situ, if possible);
- The number, type, and size of mines within the State or on Indian lands – historic and present;
- Regions, counties, or other political subdivisions of the State or Indian lands where mining is located;
- Significance of coal mining to the local and State or Tribal economies;
- Any other information characterizing coal mining in the State or on Indian lands that provides a sense of conditions in the State or on Indian lands; and
- Any significant changes in the above information that have occurred during the Evaluation Year.

III. Overview of Public Participation and Outreach Efforts

Instructions: To provide a context or characterization for the reader to understand the level of public involvement and the opportunities provided for public input by OSMRE and the State or Tribe, prepare a brief narrative setting forth general information on public participation in OSMRE's oversight process and in the State or Tribal program. The term "public" includes all stakeholders (i.e., citizenry at large, industry, other Federal, State, Tribal, or local agencies, and environmental groups). In general, include some or all of the following information:

- OSMRE's website and the State or Tribal website (if available) where the public can find information relating to public comment, the State's or Tribe's Performance Agreement, and other documentation;
- The opportunities and information OSMRE and the State or Tribe give to the public to provide input into oversight and State and Tribal regulatory processes;
- Public meetings held and quantification of the amount of participation that occurred;
- OSMRE's and the State or Tribe's outreach efforts;
- Significant involvement of environmental, industry, and grassroots organizations;
- Results or impacts to the effectiveness of the relevant program that have occurred due to public participation;
- Highly controversial areas or concerns that have arisen due to public involvement;
- Precedent-setting legal issues decided during the period; and
- A brief summary of any specific issues or successes identified through OSMRE evaluations conducted on the State's or Tribe's implementation of the public participation aspects of the relevant program.

IV. Major Accomplishments and Innovations

Instructions: Briefly summarize the State's or Tribe's overall performance in implementing its regulatory program to meet the applicable purposes listed in section 102 of SMCRA, 30 U.S.C. 1202. Identify any significant accomplishments and innovations that may be of national or regional interest and place each in context. This description should include areas of the State or Tribal program that go beyond the minimum requirements and should include areas of the State or Tribal program where innovative approaches to solving problems have proven successful. Provide an overall summary of the success of the State or Tribal program and the State's or Tribe's and OSMRE's expectations for the program in the coming year as they relate to the accomplishments and innovations described above.

V. Success in Achieving the Purposes of SMCRA

Instructions: Place the following subsections in this section of the report, substituting State- or Tribal-specific information where so indicated.

OSMRE evaluated each State and Tribe to collect data for a national perspective in terms of the following:

- Off-site Impacts –
 - Number and extent of observed off-site impacts
 - Number and percentage of inspectable units free of off-site impacts
- Reclamation Success –
 - Number of acres that have been mined and reclaimed and which meet the bond release requirements and have been released for the various phases of reclamation

Indicate in this section of the report where the reader can locate individual topic reports that will provide details on how OSMRE conducted evaluations of the following measurements. Include the Field Office name, address, phone numbers, email addresses, and the OSMRE website address where the reports are located.

A. Off-site Impacts

Instructions: Prepare a summary evaluation of the data reported in Table 5, Off- site Impacts, identifying the sources of the information and an analysis with regard to the effectiveness of the State or Tribal program in protecting the environment and public from off-site impacts resulting from surface coal mining and reclamation operations. The summary should include the number and percentage of inspectable units that were free of off-site impacts, provide an explanation of the significance of that finding, and report on the results of any root cause analyses that were conducted. The summary also should report the actions that are being taken with or by the State or Tribe to correct any programmatic deficiencies that may have caused or allowed off-site impacts to occur and to develop strategies or approaches to lessen the number of future impacts.

As noted above, see page A-9, even though some “off-site” impacts may actually be within the overall permit area, they will be reported as off-site impacts under Table 5, and may also be identified and addressed in a separate narrative in the annual evaluation report. Also address off-site impacts identified on bonded and bond forfeiture sites in this section.

In addition, discuss off-site impacts that were identified and reported in prior years in this section so that new impacts can be distinguished from impacts that continue to exist but were reported in prior years. Properly characterize the magnitude of off-site impacts, especially those that continue from year to year.

B. Reclamation Success

Instructions: Prepare a summary discussing and assessing the data in Table 6, Surface Coal Mining and Reclamation Activity, with regard to the State or Tribal program's effectiveness in ensuring successful reclamation on land affected by surface coal mining operations. The summary also should report the actions that are being taken with or by the State or Tribe to prevent future occurrences when areas do not meet bond release standards. Where a regulatory authority requests, and provides relevant information, OSMRE can assess separately surface mines, underground mines, or other types of mining operations.

VI. National Priority and General Oversight Topic Reviews

Instructions: Provide a short description of all oversight topics that OSMRE reviewed during the period. List all national priority review topics first in this section followed by program-specific oversight topical reviews. The description may include issues that the Field Office identified through means other than a formal oversight study topic. Include a statement on how and where to obtain individual topic reports and information. Use this section to summarize results of any topic reviews. Use photographs or data charts to better illustrate and communicate findings to the reader.

VII. Regulatory Program Issues

Instructions: List and discuss all Regulatory Program Problems that have been *corrected* during the Evaluation Year and indicate which of those identified problems were the subject of an Action Plan. In addition, list and discuss all Regulatory Program Problems that were *uncorrected* at the end of the Evaluation Year and indicate which of those identified problems were or are the subject of an Action Plan.

Directive REG-23, Corrective Actions for Regulatory Program Problems and Action Plans, provides guidance on corrective actions that may be taken to resolve Regulatory Program Problems including the Action Plan process. List Action Plans in Table 14, Status of Action Plans, in Appendix 1 of the Annual Evaluation Report.

VIII. OSMRE Assistance

Instructions: To provide a context or characterization for the reader to understand the level of assistance that OSMRE has provided to the State or Tribe during the evaluation year, include:

- Specific technical assistance;
- Training;
- Management assistance;

- Financial (reference Table 9, Funds Granted to State or Tribe by OSMRE);
- Any other notable assistance provided, as well as the expected results; and
- A brief general statement about OSMRE’s assistance role.

Appendix 1 Summary of Core Data to Characterize the Regulatory Program

Instructions:

Complete the Regulatory Program Data for States and Tribes (DST) tables in accordance with section F. Instructions for Completion of Specific Tables for Appendix 1, below (i.e., after the instructions for completing Appendix 2). The reporting period for all tables, except Table 1, is the Evaluation Year (Table 1 contains Production Data for the Calendar Year). The DST will produce report-ready tables including the tables showing Historical Trends. Append the tables from the DST after the following title page for Appendix 1. If a table does not apply to a particular State or Tribe, enter an explanatory statement in lieu of the table.

Insert the following Appendix 1 title page with text and the List of Tables into the Annual Evaluation Report, followed by the Tables from the DST;

**[State or Tribe] Annual Evaluation Report
Evaluation Year [YYYY]**

APPENDIX 1

Summary of Core Data to Characterize the Regulatory Program

The following tables present summary data pertinent to mining operations and regulatory activities under the [State or Tribal] regulatory program. Unless otherwise specified, the reporting period for the data contained in the tables is the Evaluation Year. Other data and information OSMRE uses in its evaluation of [State's or Tribe's] performance is available for review in the evaluation file maintained by [OSMRE Office].

Because of the enormous variations from State to State and Tribe to Tribe in the number, size, and type of coal mining operations and the differences between State and Tribal programs, the summary data should not be used to compare one State or Tribe to another.

List of Tables

| | |
|----------|--|
| Table 1 | Coal Produced for Sale, Transfer, or Use |
| Table 2 | Permanent Program Permits, Initial Program Sites, Inspectable Units, and Exploration |
| Table 3 | Permits Allowing Special Categories of Mining |
| Table 4 | Permitting Activity |
| Table 5 | Off-site Impacts |
| Table 6 | Surface Coal Mining and Reclamation Activity |
| Table 7 | Bond Forfeiture Activity |
| Table 8 | Regulatory and AML Programs Staffing |
| Table 9 | Funds Granted to State or Tribe by OSMRE |
| Table 10 | State or Tribal Inspection Activity |
| Table 11 | State or Tribal Enforcement Activity |
| Table 12 | Lands Unsuitable Activity |
| Table 13 | OSMRE Oversight Activity |
| Table 14 | Status of Action Plans |
| Table 15 | Land Use Acreage (Optional) |

Appendix 2 State's or Tribe's Comments on the Annual Evaluation Report

Instructions: Insert the following title page for Appendix 2 into the Annual Evaluation Report:

**[State or Tribe] Annual Evaluation Report
Evaluation Year [YYYY]**

APPENDIX 2

Comments of ["State of [State Name]" or "[Name of Tribe]" on the Report

Instructions: Append the comments on the Annual Evaluation Report submitted by the State or Tribe after the title page followed by a discussion of how OSMRE addressed each of the comments. If the State or Tribe had no comments, add the following sentence to the title page:

[State or Tribe] had no comments on the Annual Evaluation Report.

A. Instructions and Operational Manual for Completion of Appendix 1 Tables

On an annual basis, OSMRE's Program Support Directorate will consult with the Regions, Field Offices, and the Office of Policy Analysis and Budget on issues encountered with the DST tables. Based upon this consultation, the Program Support Directorate will prepare detailed instructions or necessary revisions on completing the tables for Appendix 1. These instructions will be compiled in an Operational Manual for Completion of Appendix 1 Tables and will be distributed to the Regions no later than May 15 of each year. Field Offices will disseminate this information in a timely manner and will work with the RAs to complete the tables in accordance with this manual. Field Offices will disseminate this information no later than May 31, and will work with the RAs to complete the tables in accordance with this Manual.