1-465-25 (Continued)

B. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. Termination for convenience shall be handled as an amendment and shall be signed by the FOD.

C. The recipient shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

D. OSM shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

1-465-30 PROCEDURES FOR SUSPENSION OF PAYMENTS

A. The FO shall identify the issue or deficiency which precipitated the proposed suspension of payments and work with the grantee to resolve the issue or develop a timetable for resolution.

B. If the grantee does not resolve the issue in a timely manner or does not adhere to the agreed-to timetable, the FO shall evaluate the situation and coordinate with AD-FO, DFM and, when necessary, the appropriate Headquarters program division.

C. If the decision is made to suspend payments, the FO shall inform the grantee of the decision and the approximate date on which payments will be suspended if satisfactory resolution is not achieved.

D. DFM shall take final actions to suspend payments.

1-465-35 PROCEDURES FOR REDUCTION, SUSPENSION AND TERMINATION OF GRANTS

A. The FO shall identify any possible deficiencies and attempt resolution. If unsuccessful, it shall recommend action to the appropriate AD-FO.

B. The AD-FO shall evaluate the situation, coordinate when necessary with the appropriate Headquarters program division and recommend action to the AD-RRP.

C. After receiving AD-FO and AD-RRP concurrence in the proposed action, the FO shall prepare a notice to the State agency. The FO shall give thirty (30) days written notice to the recipient by certified mail of the proposed action after identifying the violation or deficiency and attempting

1-465-35 (Continued)

resolution. The notice shall inform the recipient that reduction, suspension or termination of the grant or cooperative agreement will begin 30 days from the date of the notice if appeal action is not taken within the thirty (30) day period.

D. The FO shall give the recipient the opportunity for consultation and remedial action.

E. If no remedial action is taken, or appeal made, by the recipient within 30 days from the date of the notice letter, the FO shall initiate the reduction, suspension or termination of the grant or cooperative agreement by informing AD-RRP that no appeal is being processed by the recipient.

F. The recipient may appeal the FO decision to the Director, OSM, in writing, outlining reasons for requesting review. This must be done within thirty (30) days of the notice of reduction, suspension or termination of the grant or cooperative agreement.

G. The recipient may appeal the Director's decision to the Secretary, DOI, in writing, outlining the reasons for requesting review. This must be done within thirty (30) days of the Director's decision. The Secretary's decision is final.

H. When the reduction, suspension or termination action is finalized, the recipient must refund the unobligated portion of funds.

I. The FOD may allow termination costs.

J. A copy of all FO correspondence regarding a reduction, suspension or termination of a grant/cooperative agreement shall be provided to the AD-FO. A copy shall be provided by AD-FO to the DFM in Denver and the AD-RRP.

CHAPTER 1-500
NONPROCUREMENT DEBARMENT AND SUSPENSION

1-500-00	Purpose
10	Background
20	Definitions
30	Causes for Debarment and Suspension
40	Policy
50	Applicability
60	Responsibilities
70	Procedures

1-500-00 PURPOSE

This chapter outlines the DOI policies and OSM-specific procedures to implement the government-wide rule on nonprocurement debarment and suspension. Refer to 43 CFR 12.100 for detailed discussions and Departmental procedures.

1-500-10 BACKGROUND

A. EO 12549, "Debarment and Suspension", was signed on February 18, 1986, as part of the Reagan Administration's initiatives to curb fraud, waste and abuse. The EO called for the development of a system whereby debarment or suspension of a participant in a Federal financial assistance program by one agency would have government-wide effect.

B. OMB issued guidelines in the Federal Register on May 29, 1987 (52 FR 20360-20369). The guidelines stated that "It is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for the purposes of punishment."

C. On May 26, 1988, the government-wide rule was published in the Federal Register (codified by DOI at 43 CFR 12.100). The rule, which defines the causes, effects, due process, and compliance tools for debarment and suspension actions, applies to primary and lower-tier covered transactions.

1-500-20 DEFINITIONS

Certain definitions are critical to the understanding of this chapter and, therefore, are provided below.

1-500-20 (Continued)

A. Debarment - The exclusion of a person from participating in covered transactions, generally for no more than three years, after proper notification, hearing and appeals procedures have been followed.

B. Lower-tier transaction - Transactions between a grantee and another person, organization or contractor, including: all subgrants and contracts that exceed $25,000. Contracts for less than $25,000 are considered lower-tier transactions when the person receiving the contract has a "critical influence on or substantive control" over the transaction, such as principal investigators and providers of audit services.

C. Person - Any individual, corporation, partnership, association, unit of government, or legal entity

D. Primary covered transaction - Any nonprocurement transaction between OSM and a person, regardless of type, including: direct grants and cooperative agreements.

E. Principals - Officers, directors, owners, partners and key employees who have primary management responsibility, critical influence or substantive control.

F. Suspension - The immediate exclusion of a person from participating in covered transactions for a temporary period pending completion of an investigation and other such legal or debarment proceedings as may ensue.

1-500-30 CAUSES FOR DEBARMENT AND SUSPENSION

A. The grounds for debarment and suspension focus on the commission of fraud or wrongdoing, whether against a Federal agency, State or individual. It is the act of wrongdoing, and not the program or victim, that is relevant. Further, mere technical cause for debarment does not require an agency to debar. Causes for debarment from a Federal nonprocurement program include:

1. A conviction or civil judgment for fraud, criminal offenses, violation of antitrust statutes, embezzlement, theft, forgery, bribery, falsification of records, false claims, obstruction of justice or other offenses that indicate a lack of business integrity or honesty;

2. A serious violation of public agreement that affects "the integrity of an agency program" such as a willful failure to perform, history of substantial non-compliance, and willful violation of statutory or regulatory provisions; and

1-500-30 (Continued)

3. Knowingly doing business with a debarred or suspended party or failure to pay a substantial debt or a number of outstanding debts.

B. Additionally, adequate evidence to suspect the commission of an offense outlined in 1-500-30A. is sufficient grounds for initiating suspension action. Indictment is considered adequate evidence for purposes of suspension actions.

1-500-40 POLICY

Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment.

1-500-50 APPLICABILITY

The nonprocurement debarment and suspension rule is applicable to all OSM primary and lower-tier transactions.

1-500-60 RESPONSIBILITIES

A. The Debarring/Suspending Official for all DOI actions is the Director, Office of Acquisition and Property Management.

B. The AD-RRP is responsible for forwarding recommended debarment/suspension actions to the Department.

C. The FODs are responsible for:

1. Checking the "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" before the FOD signs a grant or cooperative agreement; and

2. Investigating and documenting each request for debarment or suspension action.

1-500-70 PROCEDURES

A. For Compliance

1. Each recipient shall:

a. As part of the original application for financial assistance, submit the DI 1953 form, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions", for it and its principals. EXCEPTION: States do not have to certify themselves, but are required to certify their principals.

b. Decide the method and frequency by which it determines the eligibility of its principals.

c. Require each participant in its lower-tier covered transactions to submit the DI 1954 form, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", for it and its principals as part of any proposal submitted in connection with such lower tier covered transactions. (Copies of these forms are not submitted to OSM, except as noted in d. below.)

d. For those lower-tier participants identified in the original application, include the DI 1954 form, as part of the original application package.

e. Inform the OSM FOD in writing if at any time the recipient learns that any of the certifications included in its original application package were erroneous when submitted or have become erroneous by reason of changed circumstances.

2. Each FO shall check the "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" before the FOD signs a grant or cooperative agreement, in order to determine whether a participant or principal is debarred, suspended, ineligible or voluntarily excluded. (The information is also available electronically through the GSA's Federal Supply Service Multi-Use File for Interagency News (MUFFIN).)

1-500-70A. (Continued)

B. For Initiating Debarment/Suspension Action

1. The FO shall investigate and document information concerning the existence of a cause for debarment. The information shall be forwarded, through the AD-FO for review and concurrence, to the AD-RRP.

2. The AD-RRP shall review the information and, if determined appropriate, forward to the Department for action.

3. The DOI Debarring/Suspending Official shall process the debarment action using procedures outlined in 43 CFR 12.100, as appropriate.

CHAPTER 1-510
DRUG-FREE WORKPLACE

1-510-00	Purpose
10	Background
20	Applicability
30	Recipient Drug-Free Workplace Policy
40	Recipient's Compliance
50	Sanctions for Non-Compliance

1-510-00 PURPOSE

The purpose of this chapter is to outline DOI, OSM and government-wide policies and procedures for compliance with the Drug-Free Workplace Act of 1988.

1-510-10 BACKGROUND

As part of omnibus anti-drug legislation, Congress enacted the Drug-Free Workplace Act of 1988 (P.L. 100-690), Title V, Subtitle D). The Act requires Federal recipients and contractors to certify that they maintain a drug-free workplace. The final rule implementing the Drug-Free Workplace Act of 1988, and form DI 1955 (Revised), Certification Regarding Drug-Free Workplace Requirements, were published in the Federal Register (55 FR 21677-21709) (Appendix 86). To implement the Act, 35 Federal agencies adopted a common rule that sets forth requirements for recipient compliance with the Act. The common rule amends the nonprocurement debarment and suspension regulations.

1-510-20 APPLICABILITY

A. The drug-free workplace regulations apply to direct grants approved or awarded on or after March 18, 1989.

B. Subgrants and contracts under grants are exempt from the requirements of this regulation.

1-510-30 RECIPIENT DRUG-FREE WORKPLACE POLICY

A. To certify a drug-free workplace, a recipient must:

1. Publish a statement (e.g., as part of a personnel policy or manual) that informs employees that the manufacture, distribution, possession or use of a controlled substance in the recipient's workplace is prohibited. The statement must identify the site or sites of the

1-510-30 (continued)

performance of the grant and the penalties to be imposed on employees who violate the recipient's drug-free workplace policy.

2. Establish a drug-free awareness program to inform employees of the dangers of drug abuse in the workplace, the recipient's policy of maintaining a drug-free workplace, and any available drug rehabilitation and employee assistance programs.

B. Recipients are not required to provide or pay for drug rehabilitation programs. Costs incurred by recipients to comply with the regulation are allowable.

1-510-40 RECIPIENT COMPLIANCE

A. The drug-free workplace certification is a precondition of receiving an OSM grant.

1. Indian tribes shall make the appropriate certification using form DI 1955 (Revised), Certification Regarding Drug-Free Workplace Requirements, as part of each application package.

2. States may elect to make one certification, using the DI 1955 form, in each Federal fiscal year. This certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and shall submit a copy as part of each new grant application. Submittal of a copy of the certification is required with each grant application because the Department has declined to designate a central location for certification submission.

   State agencies to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. The State agency shall retain the original of this State agency-wide certification in its central office and shall submit a copy as part of each new grant application.

B. All employees engaged in the performance of the grant must be given the drug-free workplace policy and be informed that they must comply with the policy as a condition of employment under the grant.

1-510-40 (Continued)

C. Recipients must include in their drug-free workplace policy a requirement that employees notify the recipient of any "criminal drug statute conviction for a violation occurring in the workplace within five days of the conviction. OSM must be notified within 10 days after the recipient receives notice of such a conviction. Within 30 days of notice of an employee's conviction for a drug violation in the workplace, a recipient must:

1. Take appropriate personnel action against the employee, which can include termination; or

2. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program that is approved by a Federal, State or local health, law enforcement or other appropriate agency.

1-510-50 SANCTIONS FOR NON-COMPLIANCE

A. Non-compliance. A recipient is deemed to be in non-compliance with the drug-free workplace regulation if:

1. The recipient has made a false certification;

2. The recipient has violated the certification; or

3. The recipient has failed to make a good faith effort to provide a drug-free workplace (e.g., several employees are convicted of criminal drug statute violations that occurred in the workplace).

B. Sanctions. The recipient shall be subject to one or more of the following sanctions, if the FOD determines that the recipient is in non-compliance with the drug-free workplace regulation:

1. Suspension of payments under the grant;

2. Suspension or termination of the grant; and

3. Suspension or debarment from all federally-assisted activities. (The drug-free workplace regulation is an amendment to the nonprocurement debarment and suspension regulation.)

CHAPTER 1-520
LOBBYING

1-520-00	Purpose
20	Background
30	Applicability
40	Definitions
50	Recipient Compliance
60	Penalties
70	OSM Responsibilities

1-520-00 PURPOSE

This chapter outlines DOI. OSM, and government-wide policies implementing anti-lobbying restrictions.

1-520-20 BACKGROUND

On October 23. 1989. the Department of the Interior and Related Agencies Appropriations Act 1990 (P.L. 101-121) (the Act) was signed into law. Section 319 of the Act amended Title 31 of the United States Code by adding a new Section 1352, "Limitations on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions".

Published on February 26, 1990, in the Federal Register (FR 55 6735-6756 [Appendix 84]) an interim final rule was published in response to Section 319 of P.L. 101-121. Also, a notice providing additional information about OMB's interim final guidance of December 20, 1989, was published in the Federal Register (55 24539-24542 [Appendix 85]) on June 15, 1990. This notice also includes replies to two letters addressed to OMB from Members of Congress as well as OMB's response.

Section 1352 generally prohibits recipients of Federal grants, cooperative agreements and contracts from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose any lobbying efforts with nonappropriated funds.

1-520-30 APPLICABILITY

Section 1352 is applicable to new awards to States (Indian tribes are excluded) that exceed $100,000 and are approved on or after December 23, 1989. Subgrants and contracts under grants exceeding $100,000 are also included.

It is important that certain definitions are required for a clear understanding of this chapter which are provided below.

1-520-40 DEFINITIONS

A Influencing or attempting to influence - making with the intent to fund, influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

B. Recipient - Includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

1-520-50 RECIPIENT COMPLIANCE

In order to comply with the requirements of Section 1352 and as part of the application package, grantees must:

1. Submit a "Certification Regarding Lobbying" form DI-1963 as part of the application package.

2. Submit a "Disclosure of Lobbying Activities" form SF-LLL and "Continuation Sheet", if needed, SF-LLL-A) as part of the application package, if the recipient has made or has agreed to make any payments using nonappropriated funds for lobbying efforts. The disclosure form shall also be submitted at the end of each calendar quarter in which actual payments occur or when there are changes that materially affect the accuracy of the information contained in the disclosure form previously filed.

1-520-50 (Continued)

3. Applicable subrecipients (subawards that exceed $100,000) shall submit the DI-1963 form to the grantee. In addition, those subrecipients shall submit the SF-LLL and SF-LLL-A form(s) to the grantee **if** the subrecipient has made or has agreed to make any payment using nonappropriated funds for lobbying effects. Those subrecipients shall also submit the disclosure form to the grantee whenever actual payments occur or when there are changes that materially affect the accuracy of the information contained in any disclosure form previously filed.

1-520-60 PENALTIES

A. If required certification is not filed, a civil penalty of not less than $10,000 and not more than $100,000 will be imposed for each such expenditure.

B. Should any person fail to file or amend the required disclosure form a civil penalty of not less than $10,000 and not more than $100,000 will be imposed for each such failure.

1-520-70 OSM RESPONSIBILITIES

A. The Field Office Directors are responsible for monitoring and collecting and submitting the disclosure forms **quarterly** to the appropriate Assistant Director, Support Centers. The original forms are to be placed in the Field Office grant file.

B. The Assistant Directors, Support Center are required to submit the forms to the Division of Management Services.

C. The Division of Management Services is responsible for consolidating and submitting the forms to the Assistant Director, Administration and Finance for submission to the Department, Director, Office of Acquisition and Property Management.

CHAPTER 3-01
REGULATORY PROGRAMS OVERVIEW

3-01-00	Background
10	Allocation of Funds
20	Matching Share
30	Program Income
40	Use of Title V Regulatory Grant Funds to Cover Certain Bond Forfeiture Costs

3-01-00 BACKGROUND

A. Section 102 of the Surface Mining Control and Reclamation Act (SMCRA) establishes that one of the purposes of SMCRA is to "assist the States in developing and implementing a program to achieve the purposes of this Act...". To do that, Section 705 authorizes the Secretary to provide assistance to States in developing, administering and enforcing State programs. When a State elects to administer an approved program on Federal lands, through a cooperative agreement, the Secretary is authorized to increase the amount of financial assistance to cover costs the Department would otherwise incur in regulating coal mining on those lands.

B. The Federal regulations implementing SMCRA established programs to encourage and assist State agency implementation of Title V. 30 CFR Chapter VII describes the funding of the initial regulatory program through interim grants; the development of a permanent program through program development grants; the implementation of the Small Operator Assistance Program (SOAP) through SOAP operational grants; the implementation of an approved permanent program through administration and enforcement grants; and funds cooperative agreements if a State elects to regulate coal mining and reclamation operations on Federal lands.

3-01-10 ALLOCATION OF FUNDS

A. Each applicant shall submit to the appropriate FOD approximately eighteen (18) months prior to the beginning of the Federal fiscal year for which a grant will be requested, a projection of its program budget by functional categories (permitting, inspection and enforcement, SOAP administration, lands unsuitable and other administrative costs), object class categories (personnel and fringe benefits, travel, equipment, supplies, contractual, indirect charges and other) if applicable, the costs of administering the program on Federal lands and SOAP operational grant estimates. The Director will use these budget summaries in preparing Federal budget estimates.

3-01-10 (Continued)

B. Each applicant shall submit to the appropriate FOD approximately three (3) months prior to the beginning of the Federal fiscal year for which a grant will be requested, a projection of its program budget, including functional and object class categories.

C. The Director shall allocate to the States the full amount requested and approved in each State's program budget submitted as part of its grant application, provided that the amount available in the Federal budget is sufficient.

D. If the funds available to the Director for grants are insufficient to cover the total grant and Federal lands funding needs of all States, the Director shall allocate as much of each State's requested and approved budget estimate as possible and, at least, sufficient funds to cover the portion of each State's requested and approved budget estimate actually within the current fiscal year.

E. Allocation of a specific amount of funds to a State does not assure that grants for that amount will be approved. Each State must apply to OSM and secure approval for grants in accordance with the requirements set forth in the Act, 30 CFR Chapter VII, and this Manual.

F. State regulatory program (Title V) grants are funded from annual (one-year) appropriations. These funds are available for obligation by the Federal grantor agency only to meet bona fide needs of the fiscal year for which they were appropriated; the authorization to obligate these funds expires at the end of the fiscal year for which they were appropriated. Because of its one year authorization limit, funds appropriated for State regulatory program grants must be used to obligate grants with performance periods that begin in the current fiscal year. Performance periods may not be modified to circumvent this policy.

3-01-20 MATCHING SHARE

A. The program development and administration and enforcement (A&E) grants have a grantee matching requirement as outlined in Section 705 of SMCRA.

B. Federal funds received by a grantee may not be used to satisfy the matching requirement of another Federal grant program, unless the law authorizing the grant program specifically allows this arrangement or the funds are obtained via revenue sharing or block grants.

3-01-20 (Continued)

Since SMCRA does not authorize a match of Federal funds with Federal funds, nor are its grant funds derived from revenue sharing or block grants, OSM *does not* have the authority to allow grantees to use OSM grant funds to match funds from other Federal programs. Likewise, funds from other Federal grant programs cannot be used to match OSM grant funds.

3-01-30 PROGRAM INCOME

A. Recipients must account for all income earned during the grant performance period from grant supported activities.

B. Program income earned from activities on non-Federal lands shall be used to finance the non-Federal share of the A&E grant (cost sharing option). Amounts collected above the non-Federal share normally will be deducted from the Federal share of costs.

C. When the A&E grant includes funding for Federal lands activities, the program income earned from activities on Federal lands shall be deducted from the gross Federal lands costs.

3-01-40 USE OF TITLE V REGULATORY GRANT FUNDS TO COVER CERTAIN BOND FORFEITURE COSTS

This section provides guidance on which activities associated with bond forfeiture sites are allowable as program costs under the regulatory grant program, and which costs must be funded from either the proceeds of the forfeited bond or by other State resources.

A. Permanent Program Forfeiture Sites

1. Administrative costs not directly associated with site-specific reclamation work may be funded by a grant if such costs are part of the forfeiture process or if the activities would have been performed had there been no forfeiture. Thus, site inventories and priority ranking activities, forfeiture processing, site inspections and contract monitoring (to the extent that it does not exceed the level of effort that would have been expended had there been no forfeiture) may be allowable program costs.

2. Costs associated with site-specific activities directly related to completion of the reclamation plan cannot be paid from grant funds. Therefore, redesign of a reclamation plan after forfeiture and the reclamation work itself are not allowable costs under a regulatory program grant. Since such costs are totally dependent upon the condition of the site, they must be

3-01-40 (Continued)

funded from the proceeds of forfeited bonds or by other State resources. Similarly, the costs of issuing design and reclamation contracts on forfeiture sites must be funded from the proceeds of forfeited bonds or by other State resources.

B. Initial Program Forfeitures Sites

1. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) did not require bonds during the initial regulatory program; hence, under section 505(b) of SMCRA, any State bonding requirements for initial program sites would be considered more stringent environmental controls. Therefore, administrative costs related to bond forfeiture on initial program sites may be allowable program costs for grant purposes.

2. Administrative costs associated with bid preparation are allowable program costs to the extent that they do not include the costs of designing or redesigning the reclamation plan. Eligible costs include those related to bid specification preparation, such as planimeter work and office calculations needed to determine areas and volumes. To the extent that they would be incurred regardless of the quality of the reclamation plan, design or other permittee-supplied data included within the permit at the time of forfeiture, the expenses of site visits and limited surveys to obtain data necessary for the preparation of bid specifications would also be allowable program costs. Such visits and surveys would include those conducted to estimate or confirm drainage control needs, backfilling and grading volumes or the size of areas in need of revegetation or soil amendments.

3. Ineligible costs include those related to the preparation of new maps, plans or drawings and those related to site surveys conducted for the purpose of horizontal or vertical control, acquisition of photogrammetric data or preparation of a new reclamation plan or design. The costs of the reclamation work itself are also ineligible.

CHAPTER 3-07
CHARACTERISTICS OF PROGRAM DEVELOPMENT GRANTS

3-07-00	Eligibility
10	Amount of Grants
20	Allowable Costs
30	Unallowable Costs
40	Grant Period

3-07-00 ELIGIBILITY

Any State with active or anticipated surface coal mining may apply for a grant to assist in developing a regulatory program in order to obtain primacy in regulating surface mining and reclamation operations. In order to receive a program development grant, the Governor of a State shall designate in writing one agency to submit grant applications and to receive and administer grants. An agency may apply for a program development grant for any period for which it does not have an approved State program. This includes periods devoted to:

1. The initial development of a State program.

2. The revision of a State program that has been disapproved by the Secretary.

3. The revision of a State program from which the Secretary has withdrawn approval.

3-07-10 AMOUNT OF GRANTS

For the first year of a program development grant the State may receive not more than 80 percent of the total costs. The second year of a program development grant will be limited to 60 percent of the total costs. The third year and each year thereafter it will be limited to 50 percent of the total costs. A State may request termination of its grant at any point and, if the request is approved by OSM, reserve the remaining percentage to be applied to an administration and enforcement grant. Example: If a State operates its first year of a program development grant at 80 percent and has approval to terminate after ten months, it is eligible for two months of 80 percent Federal support during the first year that an administration and enforcement grant is awarded.

3-07-20 ALLOWABLE COSTS

A. A program development grant may be used to reimburse the State for the development, revision or expansion of the following activities:

3-07-20A (Continued)

1. State laws, regulations and procedures.

2. Inspection systems.

3. Training programs for inspectors and other personnel.

4. Organizational structures.

5. Information and communication systems, including data processing systems.

6. Planning process, including a data base and information system to receive and act upon petitions to designate lands unsuitable for coal mining.

7. An application for the initial administration and enforcement grant to the extent not covered by indirect costs of the other cost items.

8. Components necessary to obtain an approved state regulatory program as mutually agreed upon by the Director and the recipient.

B. Acquisition of real property must be in compliance with the Real Property Acquisitions Policy Act (P.L. 91-646).

3-07-03 UNALLOWABLE COSTS

Grants will not be approved to cover costs incurred prior to August 3, 1977. No equipment purchases or costs for implementing training programs will be allowed under this grant other than those needed for development of the state program submission.

3-07-04 GRANT PERIOD

Grants shall normally be for a period of one year with the continuing program to be funded by consecutive annual grants.

CHAPTER 3–08
CHARACTERISTICS OF ADMINISTRATION AND ENFORCEMENT GRANTS

3-08-00	Eligibility
05	Amount of Grants
10	Allowable Costs
15	Unallowable Costs
20	Grant Period

3-08-00 ELIGIBILITY

A. Administration and enforcement (A&E) grants are available to assist the States in administering regulatory programs approved under Section 503 of the Act.

B. To be eligible for an A&E grant a State must:

1. Have an approved State program and

2. Have a single State agency designated in writing by the Governor to receive and administer grants.

3-08-05 AMOUNT OF GRANTS

A. If no program development grant has been awarded, OSM may approve the first A&E grant applicable to non-Federal/non-Indian lands for not more than 80 percent of the agreed upon total costs for administration and enforcement of the program. If a program development grant has been awarded for only one year, OSM may approve an A&E grant for not more than 60 percent of the agreed total costs.

B. If a program development grant has been awarded for more than one year but less than two years, OSM may approve the first A&E grant applicable to non-Federal/non-Indian lands for up to 60 percent for that proportion remaining in the second year and for up to 50 percent for the proportion allocated for the third year.

C. For the third and following years, OSM may approve A&E grants applicable to non-Federal/non-Indian lands for up to 50 percent of the agreed total costs for administration and enforcement of the program.

D. Costs incurred for work relating to Federal lands may be reimbursed to 100 percent of the agreed total costs.

3-08-10 ALLOWABLE COSTS

A. Costs necessary to administer and enforce the approved State program are eligible to the extent that they are:

1. Incurred for items identified directly in the State program.

2. Identifiable as support costs to the items directly listed in the State program. This would include such items as equipment and support services.

3. For the development of an amendment to the State program.

4. In accord with OMB Circular A-87, the Grants Management Common Rule and Treasury Circular 1075.

B. Acquisition of real property must be in compliance with the Uniform Relocation and Real Property Acquisition Policy Act.

3-08-15 UNALLOWABLE COSTS

A. Costs which are not related to the administration and enforcement of the permanent program are unallowable. Unallowable costs include those that:

1. Are not in accord with OMB Circular A-87, the Grants Management Common Rule and Treasury Circular 1075.

2. Have the effect of giving financial assistance to operators other than those authorized under SOAP or provided as general technical assistance.

3. Are for activities constituting significant deviations from those identified in the approved state program.

3-08-20 GRANT PERIOD

Grants shall normally be for a period of one year with the continuing program to be funded by consecutive annual grants.

CHAPTER 3-09
CHARACTERISTICS OF
THE SMALL OPERATOR ASSISTANCE PROGRAM (SOAP) GRANTS

3-09-00	Background
10	Eligibility
20	Amount of Grants
30	Allowable Costs
40	Unallowable Costs
50	Recovered Federal Funds

3-09-00 BACKGROUND

A. During the initial regulatory program phase, two types of SOAP grants were available to States - Administration and Operational. The SOAP Administration grant, which is no longer awarded, provided funds to the State to administer the SOAP program during the developmental stages of the program and prior to the time a permanent State program was approved. The SOAP Operational grant enabled the State to fund qualified laboratories to collect, analyze, and interpret hydrologic and geologic data and produce technical reports for small operators.

B. After approval of a State program, administrative functions are funded as part of the overall A&E grant; operational costs continue to be funded through the award of operational grants to the State.

3-09-10 ELIGIBILITY

The State must be administering an approved permanent program to receive a SOAP Operational grant.

3-09-20 AMOUNT OF GRANTS

The State may be reimbursed for up to 100% of the allowable costs. In the event Federal funds are insufficient to support State Operational Grant requests, monies will be allocated to States based either on the proportion of each State request to the total of all requests or a case-by-case evaluation of individual State requests. States must establish a formula for allocation of reduced grant awards in accord with 30 CFR 795.11(b).

3-09-30 ALLOWABLE COSTS

A. Expenditures by either State personnel or qualified laboratories to provide planning services are allowable. Planning services are limited to background data searches and work statement development. both directly related to individual assistance mining sites. Costs for planning services provided by State personnel must be documented with detailed records to clearly distinguish these services from administrative activities in order to support audit findings and to provide a means to verify reasonableness of cost. Furthermore, all expenditures by qualified laboratories to collect field data and prepare reports necessary for the determination of probable hydrologic consequences and the statement of the results of test borings or core sampling required in the permanent program mining application are allowable. Ground water observation well drilling is authorized as necessary on a case by case basis.

B. To be allowable, all costs must be in accord with the principles set forth in OMB Circular A-87

C. Additional technical services specified by State law or regulation and as allowed by 30 CFR 795.

3-09-40 UNALLOWABLE COSTS

A. Federal funds appropriated for the purpose of SOAP, mandated by the narrow statutory authorization in SMCRA. are linked precisely to baseline information and reports needed to satisfy hydrologic and geologic permitting requirements for an approved applicant. The following items are unallowable costs under the SOAP operational grant. expenses incurred by the regulatory authority to administer the SOAP, including Indirect costs; exploratory test drilling, core drilling or observation well drilling that may be needed to define the extent of coal or for sampling overburden materials: engineering analyses or designs; and collection of data from local or regional sites in advance of receiving applications for assistance.

B. Interest penalties associated with late payments for contractual work with laboratories are unallowable.

3-09-50 RECOVERED FEDERAL FUNDS

Federal funds recovered through State liability reviews and subsequent reimbursement actions can either be credited to the operational grant under which the obligation occurred or returned to OSM via check. (See chapter 1-100-40)

CHAPTER 3-10
STATE/FEDERAL COOPERATIVE AGREEMENTS FOR REGULATION ON FEDERAL LANDS

3-10-00	Eligibility
10	Grant Amount
20	Operating Procedures
30	Allowable Costs
40	Unallowable Costs
50	Grant Period

3-10-00 ELIGIBILITY

According to Section 523(c) of SMCRA, any State with an approved State regulatory program may elect to enter into a State/Federal Cooperative Agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such an agreement in accordance with the provisions of SMCRA.

3-10-10 GRANT AMOUNT

The State will receive an amount up to that which the Secretary determines is approximately equal to the amount the Federal Government would have expended for such regulation. However, no grant may exceed the actual costs to the State of regulating surface coal mining and reclamation operations on Federal lands.

3-10-20 OPERATING PROCEDURES

A. Applications for grants to States under Section 705(c) of SMCRA are made as follows:

1. OSM will advise each State about preparation of its application for the funds to administer and enforce a State/Federal cooperative agreement. Such funds will be awarded as part of the A&E grant.

2. OSM and each State that applies for funds to administer a State/Federal cooperative agreement must determine in advance of the grant period the method that will be used to determine the Federal lands costs. See Appendix 111.

3. OSM will estimate the expense to perform the work on Federal lands in each State as provided according to Item 2 above by following procedures in Appendix 111.

3-10-20A (Continued)

4. OSM will negotiate with each State on the amount to fund the administration and enforcement of the State/Federal cooperative agreement.

B. For monitoring the expenditures, the State and OSM will follow the approved reporting system for OSM Administrative and Enforcement Grants.

3-10-30 ALLOWABLE COSTS

The cost for work performed on Federal lands only can be included in the request for funds to administer and enforce the State/Federal cooperative agreement except as indicated in Appendix 111. Costs for work listed in Appendix 111 are eligible for reimbursement.

3-10-40 UNALLOWABLE COSTS

A. The cost for work performed on non-Federal lands cannot be included in the request for funds to administer and enforce the State/Federal cooperative agreement except as indicated in Appendix 111.

B. OSM will not pay expenses for litigation, which is the responsibility of the Department's Office of the Solicitor.

C. Expenses already funded under Section 705(a) and (b) of SMCRA are not eligible for reimbursement with funds provided to administer and enforce the State/Federal cooperative agreement.

3-10-50 GRANT PERIOD

The period shall normally be the same as for the State's A&E grant with the continuing program to be funded by consecutive annual grants.

CHAPTER 4-01
CHARACTERISTICS OF AMLR FEDERAL ASSISTANCE

4-01-00	Background
05	Definition
10	Eligibility
20	Extraction of Coal as an Incidental Part of an AML Reclamation Project
30	Site Eligibility for AMLR Projects
35	Processing Requests for Reclamation of Eligible Noncoal Problems
40	Award of Funds
50	Allowable Costs
60	Unallowable Costs
70	Grant/Cooperative Agreement Periods
80	Use of the AML Fund to Pay Certain Expenses or Claims Associated with AML Reclamation
90	Water Supply Projects

4-01-00 BACKGROUND

A. Funds from the AML Reclamation (AMLR) Fund will be used to award monies to recipient organizations to prepare State Reclamation Plans, and annual submission of reclamation projects, and to fund administrative, construction, subsidence insurance, set-aside and emergency program grants.

B. Procedures outlining the day-to-day responsibilities of the AMLR State/Indian recipient organization and the FO are presented in this manual for application review and approval, reports, monitoring and revisions.

C. Procedures outlined in this chapter are to be used in conjunction with the various Federal circulars and guides as indicated.

4-01-05 DEFINITION

The following definition is critical to the understanding of this chapter:

Distribution - The process by which OSM assigns specific amounts of the AML grant appropriation to each program State/Tribe based on a formula using the State/Tribal share balance and historical coal production.

4-01-10 ELIGIBILITY

A. Lands and water eligible for reclamation or drainage abatement expenditures under AMLR are those which were mined for coal or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

B. Lands and water in which the surface mining operation occurred between August 4, 1977, and the date on which the Secretary approved a State program under Section 503, and any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site, and which qualify as a priority 1 or 2 problem under section 403(a) of SMCRA.

C. Lands mined and abandoned between August 4, 1977, and November 5, 1990, where the surety of the mining operator became insolvent and, as of November 5, 1990, funds immediately available from other proceedings or sources were not sufficient to provide for adequate reclamation or abatement at the site, and which qualify as a priority 1 or 2 problem under Section 403(a).

D. Lands, waters and facilities which were mined and abandoned or processed for minerals other than coal or which were affected by such mining or processes and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

In determining the eligibility under this subsection of Federal lands, water and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of August 3, 1977, the applicable dates would be August 28, 1974, and November 26, 1980, respectively.

4-01-20 EXTRACTION OF COAL AS AN INCIDENTAL PART OF AN AML RECLAMATION PROJECT

A. Background. Removing coal incidental to an AML reclamation project has been recognized as a means of ensuring that sites reclaimed with monies from the AML Fund will not be remined after reclamation. Moreover, coal removal rather than coal burial minimizes the possibility of future environmental degradation due to problems associated with combustion or formation of acid mine drainage. In addition, it can be more cost effective for the reclamation agency (State/Tribe or Federal) to remove the accessible coal during reclamation, dispose of it (use or sell), and thereby offset part of the costs of reclamation.

B. Policy. The policy of OSM regarding this issue is addressed in the Abandoned Mine Land Reclamation Program "Final Guidelines for Reclamation Programs and Projects" (45 Federal Register 14810-14819, March 6, 1980). These guidelines require that the administering agency determine whether coal removal in conjunction with an AML project is exempt from Title V regulations under the provisions of section 528 of SMCRA and 30 CFR 707. If coal recovery is not incidental to the AML reclamation, the necessary permits must be obtained before reclamation activities begin.

C. Responsibilities. The administering agency must determine whether coal extracted incidental to an AML reclamation project is exempt from Title V regulation. When the administering agency is separate from the regulatory authority, the above determination will be made by the administering agency in conjunction with the regulatory authority. If the exemption applies, the administering agency will prepare a finding, as part of the project narrative to be submitted with the grant application package or in the briefing paper if the project is conducted under OSM's Federal Reclamation Program (FRP).

D. Procedures. Where it is anticipated that coal will be extracted incidental to an AML-financed construction project, the project narrative (in the case of a State/Tribal grant application) or the briefing paper (in the case of an FRP project) will include, in addition to any other required documentation, the following information regarding the proposed project:

1. That the administering agency has made a finding and determination that the coal to be recovered in conjunction with the proposed AML-financed construction project is an incidental part of the reclamation project and is integral to the construction to be accomplished.

2. That the primary purpose of the project is to reclaim eligible abandoned mine lands which utilize available funds in an effective manner.

4-01-20D (Continued)

3. That the revenues to be received from the sale of coal or the market value of the coal, if it is to be used and not sold, are less than the total cost of the reclamation project, including the costs of coal recovery activities.

4. That the consents clearly authorize extraction of coal and that, if the mineral estate is severed from the surface estate, the administering agency has the consent of the surface coal owner for right of entry and the consent of the mineral owner for extraction of the coal, except for the entry by exercise of police powers. The administering agency has the responsibility to ensure that the reclamation work, including the extraction of coal, is not initiated without such consents.

5. That the coal recovery project(s) proceeds will be returned to the AML Fund or used to offset the cost of the project.

4-01-30 SITE ELIGIBILITY FOR AMLR PROJECTS

A. Policy. It is OSM's policy that eligibility determinations are the primary responsibility of the State/Tribe under an approved AMLR Plan. (Note: If an ineligible project is funded, the appropriate procedures will apply to recover such funds.) Eligibility determinations shall be prepared as part of each State/Tribal grant application according to the procedures set forth in the State/Tribal AMLR Plan.

B. Active Mining. Whenever it is necessary, as part of an AML reclamation project, to gain access across or to affect property which is not otherwise eligible for AML reclamation, reclamation on these sites will be confined to repairing the damage caused by the use of these sites to support AML reclamation activities.

If further reclamation activities are necessary to repair damages caused by accessing an eligible site, such activities must be fully documented and justified in the project narrative prior to the authorization of funds.

C. Bond Forfeiture. Pre-SMCRA State/Tribal reclamation bonds will render a site ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the AML Fund may be sought. (See Preamble to 30 CFR Part 870.)

4-01-30 (Continued)

When assets have been recovered or obtained from all parties responsible for the reclamation, and the assets obtained are insufficient to meet all reclamation costs, the property in question will remain eligible for reclamation to the extent that additional funds are required.

When all assets of the responsible parties are identified and legal proceedings instituted to recover such assets, and the monies, if recovered, are not sufficient to cover all the reclamation costs, the properties will remain eligible as long as the administering agency enters into a binding contract with the State/Tribal Attorney General's Office or appropriate State/Tribal office, providing that any recovered funds will be turned over to the appropriate AMLR Fund account.

D. Eligible Sites Reaffected by Post-SMCRA Activities. When a site (e.g., coal refuse pile, slurry pond or wildcat) meets the eligibility criteria in sections 402(g)(4)(B)(i) and (ii), 404 or 411 of SMCRA, and has been reaffected by mining after August 3, 1977, this site will remain eligible for AMLR funding despite such post-SMCRA mining if the following conditions are met:

1. The post-SMCRA mining did not substantially increase or alter the environmental damage presented by the pre-SMCRA mining;

2. The total costs of the reclamation activities are not increased by the post-SMCRA mining; and

3. There is no known responsible party, or, if the responsible party is known, monies that are or may be recovered are insufficient to pay the total cost of reclamation.

   Recovered monies, where and when available, must either be used as part of the reclamation activities or be deposited in the appropriate AMLR Fund account.

   If these conditions are not met, that portion of the site unaffected by the post-SMCRA mining activities will still remain eligible. If this situation occurs, the project can be altered to include only the eligible portion, if feasible, or funds from non-AMLR sources may be used to pay for the percentage of the project deemed to be ineligible.

E. Hazardous Substances. If the proposed project involves the transfer, removal or reclamation of any hazardous substances, the eligibility opinion should provide a statement that the State/Tribal Attorney General's Office or the Agency's chief legal counsel has reviewed the proposed project plans and that they comply with all applicable State/Tribal and Federal laws concerning removal or reclamation of such substances.

4-01-30 (Continued)

F. Eligibility Opinions on Federal Reclamation Program Sites. The determination of eligibility on Federal Reclamation Program (FRP) sites should be done by a State/Tribal Attorney General's Office or by the AMLR agency's legal counsel because eligibility determinations are usually issues concerning State/Tribal law. If a State/Tribe does not provide a determination of eligibility for a FRP project, then the determination of eligibility should be done by the appropriate Field Solicitor's Office.

G. Multi-Use Sites. Multi-use sites are sites on which the land or other property was adversely affected by mining prior to August 3, 1977, and which was subsequently used in whole or in part for some non-mining activity. Such properties remain eligible for AMLR funding only to the extent that mining related problems exist, and that they have not been altered or increased by non-mining activities. Under certain circumstances, the intervening use may shift reclamation responsibility away from the AMLR program.

H. Public Use Facilities. Projects for the repair or replacement of public facilities (Priority 5), such as roads or bridges, which were damaged as a result of mining activities, may be eligible if the legal opinion confirms that the damage is a result of past mining activities and not from normal deterioration or lack of repair by local authorities.

4-01-35 PROCESSING REQUESTS FOR RECLAMATION OF ELIGIBLE NONCOAL PROBLEMS

Requests for reclamation of eligible noncoal problems, as provided in section 409 of SMCRA and 30 CFR 875, must be made by the Governor of a State or the head of a Tribal body. The following procedures will implement the requirements of the law and the regulations.

1. When a State or Tribe that has not certified completion of all coal related reclamation wishes to conduct eligible noncoal reclamation, the request signed by the Governor or Tribal head shall be submitted as part of a complete grant application even though it may be addressed to the Secretary or the Director.

2. Since action on the grant application constitutes action on the request, no response beyond final grant action is required on such requests.

4-01-40 AWARD OF FUNDS

A FODs shall award the full amount requested in the grantee's revised and actual budgets, provided that the amount is justified and available

B. If the funds available to the Director for financial assistance are insufficient to cover the total grant needs, the Director or an authorized representative shall award the funds available according to project priority and need.

C. Allocation of a specific amount of funds to an agency does not assure that grant or cooperative agreement requests for that amount will be approved. Each grantee must apply to OSM and secure approval for grants and cooperative agreements in accordance with the requirements set forth in the Act, implementing regulations and this Manual.

D. Funds that have been distributed to a State/Tribe that remain unrequested at the end of the fiscal year remain available solely for the use of that State or Tribe, with the exception of the emergency distribution which returns to the emergency account for distribution to other States.

E. Funds deobligated during the current fiscal year from a State/Tribe's AML grants remain available solely for that State/Tribe, with the exception of emergency grant deobligations which return to the emergency account for distribution to other States.

4-01-50 ALLOWABLE COSTS

A. Costs shall be allowable in accordance with 30 CFR 886.21 and Treasury Circular 1075. The Director or a designated representative shall determine costs which may be reimbursed according to OMB Circular A-87. Costs must be allocated to the grant/cooperative agreement to the extent of actual benefits properly attributable to the period covered by the grant/cooperative agreement. Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant/cooperative agreement.

B Costs must not be allocated or included as a cost of any other Federally assisted program.

C. Cooperative agreements to prepare State/Indian Reclamation Plans shall be used to reimburse the State/Indian tribe for activities in accordance with 30 CFR 884.

D. Cooperative agreements to prepare annual work plans prior to State/Indian Reclamation Plan approval shall be used to reimburse the State/Indian tribe for activities in accordance with 30 CFR 884.

4-01-50 (Continued)

E. Administrative or nonconstruction grants shall be used to fund States/Indian tribes to provide information in the development of advance budget estimates. prepare information for the fulfillment of NEPA requirements, administrative costs involved in planning for future grants, preparing reports. evaluating present grants or other allowable activities.

F. Construction grants shall be used to fund States/Indian tribes for reclaiming abandoned mine lands in accordance with approved State/Indian reclamation plans. Subsidence insurance, set-aside and emergency program grants shall be used for their specific purposes only.

4-01-60 UNALLOWABLE COSTS

A. Costs not in accordance with the Surface Mining Control and Reclamation Act, OMB Circular A-87, 30 CFR 886 and Treasury Circular 1075;

B. Construction activities for States/Indian tribes without approved plans;

C. Costs for activities which significantly alter the approved program and were not approved through appropriate revisions. and

D. Construction costs in an administrative agreement.

4-01-70 GRANT/COOPERATIVE AGREEMENT PERIODS

A. Cooperative agreements shall normally be approved for a period of one year and may be entered into at anytime during the course of a year

B Construction grants shall normally be approved for a period of three years with projects beginning and ending during the life of each grant. Administrative grants are awarded for a period of one year.

C. Special 10% Set-Aside Grants shall normally be approved for a period of 30 days.

D. Subsidence insurance program grants shall be approved for a period of up to eight years.

E. Emergency program administrative and construction grants shall normally be approved for one year.

4-01-80 USE OF THE AML FUND TO PAY CERTAIN EXPENSES OR CLAIMS ASSOCIATED WITH AML RECLAMATION

A. Policy. Over a period of time, various issues and questions concerning the appropriate use of AML funds for miscellaneous uses have been raised. OSM policy regarding these issues is brought together in this section of the Federal Assistance Manual.

B. Procedures

1. Repairs to Structures. There is no specific authorization in Title IV to justify expenditures for repairs to structures damaged by subsidence or other adverse effects of past mining. In fact, Congress went so far as to prohibit the use of Title IV funds to pay the actual construction costs of housing. (Section 407(h) SMCRA.) The intent is that Title IV funds should not be diverted to private needs, as opposed to what are considered to be public needs. Therefore, the repair of structures should not be authorized unless the repairs are a direct and necessary part of the cost-effective abatement plan for the project as a whole, such as foundation reinforcement, and only to the extent that it is necessary to support the foundation during construction activities to prevent damage to the structure or harm to the construction workers. (Section 412 SMCRA)

2. Asbestos Removal from Structures. A State requested an AML grant to remove asbestos insulation from hot water pipes in houses that were originally built by a mining company for its employees. Houses built for company employees were not directly connected to coal extracting or processing. Therefore, the proposed removal of asbestos insulation from the houses is not eligible for AML funding under section 404 of SMCRA.

3. Moving or Relocating Structures. Subsidence or other hazards, on occasion, may make it necessary to move a structure in order to prevent further damage or conduct effective reclamation at the site. In such situations, State/Tribal employees will:

   a. Take all necessary steps to prevent the structures from sustaining further damage, including shoring up the structure and restoration of the site so as to achieve the previous load bearing capacity. Some minimal corrective action in the foundation may be appropriate if the damage is not attributable to other problems. The objective is to leave the site in as safe a condition as possible, given the circumstances.

   b. Advise occupants that the structure may be unsafe or borderline but do not order occupants to vacate. Instead, inform local authorities of the conditions.

4-01-80B.3 (Continued)

c. Make all reasonable efforts to reclaim the site without moving the structure. If there is no other way to reclaim the site, the structure may be moved, but only after written justification is approved by the Field Office Director. Structures will be moved only as a last resort and only if the option is cost-effective.

4. Temporary Lodging Expenses. Reclamation activities will be limited to abating, preventing or controlling the primary cause of the hazard. The costs to treat secondary or tertiary effects of past coal mining go beyond the scope and intent of Title IV. Temporary lodging expenses may be appropriate, on a case-by-case basis, only where the reclamation effort directly necessitates the removal of the residents and for a limited time, until other arrangements can be made. Payment of temporary lodging expenses must be approved in writing by the Field Officer Director.

5. Claims for Damages resulting from AML Reclamation. Where damages occur to adjacent property as a result of AML reclamation or where claims are made for loss of business, damages to personal property, or where there are other claims relating to the negligence of parties involved in the AML reclamation, the claims may not be settled by State/Tribal personnel Instead, a factual, chronological record of the investigation of the claim should be made and immediately transmitted to the Division of Surface Mining, Office of the Solicitor, for definitive action or advice. The rationale for this procedure is that claims may be covered under the Tort Claims Act, contractor liability insurance, subsidence insurance or other means and could therefore result in litigation

4-01-90 WATER SUPPLY PROJECTS

A. The Abandoned Mine Reclamation Act of 1990 (P.L. 101-508) states at section 403(b)(1), Utilities and Other Facilities that:

> "Any State or Indian tribe not certified under section 411(a) may expend up to 30 percent of the funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 402(g) for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities related to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices."

B. Projects eligible for funding under the 30 percent spending limitation referred to above include:

4-01-90 (Continued)

1. Those impacted by coal mining prior to August 4, 1977.

2. Those impacted by coal mining during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 503 of SMCRA.

3. Those impacted by coal mining during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the surety of the mining operator became insolvent during this period

4. The adverse effects of coal mining practices need not have occurred entirely within these periods so long as the State or Tribe determines that they occurred predominately in one of the above periods

C. The 30 percent spending limitation referred to above includes any water supply facility, regardless of the priority of the problem the facility is designed to address. Thus it applies to facilities that may be constructed to address a Priority 1, 2, or 5 problem.

CHAPTER 4-10
CHARACTERISTICS OF THE SUBSIDENCE INSURANCE PROGRAM

4-10-10	Background
20	Policy
30	Responsibilities
40	Grant Considerations

4-10-10 BACKGROUND

The Department of the Interior's fiscal year 1985 continuing appropriations resolution (P.L. 98-473) authorized the expenditure of Abandoned Mine Land (AML) Funds for the "establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with Section 503 of the Act, ..." Reference 30 CFR 887.

4-10-20 POLICY

A. Only those States with approved reclamation plans are eligible to receive funding under this program.

B Funding per State for this program shall not exceed $3,000,000 in State-share funds.

C. Insurance premiums shall be considered program income.

4-10-30 RESPONSIBILITIES

FOs are responsible for verifying that the cumulative total of requests is not in excess of the maximum-allowed $3.000.000 per grantee. and is State-share funds.

4-10-40 GRANT CONSIDERATIONS

A. Application Procedures

1. Application for funding shall be submitted in accordance with the requirements outlined in FAM Chapter 5-10A.

4-10-40 (Continued)

2. The program narrative statement must describe how the subsidence Insurance program is "State-administered" and how the funds requested will achieve a self-sustaining, individual State-administered program to insure private property against subsidence resulting from underground coal mining.

B. Coverage

1. Funding cannot exceed $3,000,000 in State-share funds, either through a one-time award or a series of awards.

2. Performance periods may be for up to eight years

C. Program Income

For this program. insurance premiums are considered program income during the life of the program. In accordance with the requirements of 30 CFR 887.12(e), the State must use the earned program income to further the goals of the State's subsidence insurance program (additive option).

D. Allowable Costs

1. Monies awarded may be used to cover capitalization requirements and initial reserve requirements mandated by State law provided use of monies is consistent with OMB Circular A-87.

2. Funds may be used to pay for administrative costs associated with the establishment and operation of the program.

E. Unallowable Costs

1. Monies awarded may not be used for coal-related lands that are ineligible for reclamation funding under Title IV of SMCRA. Specifically excluded are payments for subsidence damage caused by all active mining.

2. Funds cannot be used to pay for the actual construction costs of housing or for damages to public property.

CHAPTER 4-20
SPECIAL SET-ASIDE PROGRAM

4-20-00	Purpose
20	Policy
30	Responsibilities
40	Procedures

4-20-00 PURPOSE

This chapter provides procedures for the review, processing and award of grants to provide special set-aside funds to Abandoned Mine Land Reclamation (AMLR) Program *States* pursuant to the Abandoned Mine Reclamation Act of 1990.

As used in this chapter, "*State*" means a State or Indian Tribe with an approved AMLR plan.

4-20-20 POLICY

A. The Abandoned Mine Reclamation Act of 1990 (AMRA) stipulates that, of the funds granted annually by the Secretary of the Interior, a State may retain and deposit up to ten percent (10%) into either a special trust fund account established under law or an acid mine drainage fund (i.e., the sum of the deposits into both funds may not exceed 10% of the amounts granted annually). Additional conditions for the special set-aside trust fund are as follows:

   1. Set-aside awards shall be funded with the same State/Federal share proportion as the composition of the States' AML grant distribution in the year the award is made;

   2. After deposit into the special trust fund, the set-aside money, plus any interest earned, will be considered *State* funds;

   3. Monies in the special trust fund may only be spent by the *State* after September 30, 1995, and for the coal priorities outlined in Section 403(a);

   4. Should the Secretary withdraw or terminate a State regulatory program, the 10 percent set-aside program will not be available to the State beginning in the fiscal year following the year of withdrawal or termination. *(In accordance with 405(k) of SMCRA, Indian Tribes are exempt from this condition.)*

4-20-20 (Continued)

B. Awards shall not be made from funds distributed in previous years.

4-20-30 RESPONSIBILITIES

A. DAMLR is responsible for:

1. Developing program policy and procedures addressing issues related to the set-aside program; and

2. Notifying the AD-SCs and FODs, at the time they are informed of the annual distribution of funds, of the set-aside amounts available for each *State*.

B. The FODs are responsible for the review and approval of the set aside amount as part of the AML grant application.

4-20-40 PROCEDURES

A. Application. Applications for set-aside funding shall be submitted in accordance with the requirements outlined in FAM Chapter 5-10A.

B. Review of Request.

1. The FO will review the grant application and verify with the AD-SC that the amount requested by the State is not greater than 10 percent of the State's annual grant distribution of Section 402(g)(1) and (g)(5) funds.

2. Review the Program Narrative Statement - OSM 51, to ensure that the State has included a description of the special set-aside trust fund and a certification from the State Comptroller, State Auditor or similar official, that the fund has been established in accordance with the provisions of AMRA.

4-20-40 (Continued)

C. Performance Period. The length of the performance period normally should be 30 days.

D. Closeout. The State will begin to close out the set-aside portion of the grant immediately after depositing the set-aside funds into the special State trust fund. The closeout documentation should include a certification from the State Comptroller, State Auditor or similar official, that the funds have been deposited in a special trust fund account; the date of the deposit; and a statement to the effect that no monies will be withdrawn from the special trust account until after September 30, 1995. (See Chapter 5-70A for full details on closeout procedures.)

CHAPTER 4-30
CHARACTERISTICS OF GRANTEE-ADMINISTERED EMERGENCY RECLAMATION ACTIVITIES

4-30-00	Background
10	Policy
20	Responsibilities
30	Grant Considerations

4-30-00 BACKGROUND

Grantees are encouraged to undertake emergency reclamation programs on behalf of the Secretary of the Interior. Reference Federal Register notice on the "Opportunity to Amend State/Tribal Reclamation Plans to Include Provisions for Emergency Reclamation Activities" (47 FR 42729, September 29, 1982) and the guidelines for submission of amended reclamation plans issued on March 7, 1983.

4-30-10 POLICY

A. Only those Grantees with approved emergency reclamation programs are eligible to receive funding and undertake emergency projects.

B. Funding for emergency grants will be in addition to the funds allocated annually for AML grants.

4-30-20 RESPONSIBILITIES

A. FOs are responsible for:

1. Determining that emergency projects to be funded meet the definition of emergency under 30 CFR 870.5.

2. Determining the scope of work necessary to abate the emergency.

B. Grantees are responsible for ensuring that emergency reclamation activities are conducted in accordance with approved reclamation plans.

4-30-30 GRANT CONSIDERATIONS

A. Two grant applications should be submitted: one for construction project costs and one for administrative expenses.

B. Grants will be awarded for a one-year period with no time extensions.

C. Deobligated monies will be returned to the account from which they were awarded, and are not included in Grantee carryover AML funds.

CHAPTER 4-40
CHARACTERISTICS OF ACID MINE DRAINAGE FUND

4-40-00	Purpose
10	Policy
20	Plan Content and Approval
30	Responsibilities

4-40-00 PURPOSE

This chapter provides procedures for the review, processing and award of funds to provide an acid mine drainage fund pursuant to the Abandoned Mine Reclamation Act of 1990 (AMRA).

As used in this chapter, *"State"* means a State or Indian Tribe with an approved AMLR plan.

4-40-10 POLICY

A. Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Secretary. Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices.

B. The Abandoned Mine Reclamation Act of 1990 (AMRA) stipulates that, of the funds granted annually by the Secretary of the Interior, a State may retain and deposit up to ten percent (10%) into either an acid mine drainage fund or a special trust fund account established under law (i.e., the sum of the deposits into both funds may not exceed 10% of the amounts granted annually).

4-40-20 PLAN CONTENT AND APPROVAL

A. The plan shall include, but not be limited to, each of the following:

1. An identification of the qualified hydrologic unit.

2. The extent to which acid mine drainage is affecting the water quality and biological resources with the hydrologic unit.

3. An identification of the sources of acid mine drainage within the hydrologic unit.

4. An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.

5. The cost of undertaking the proposed abatement and treatment measures.

4-40-20A (Continued)

6. An identification of existing and proposed sources of funding for such measures.

7. An analysis of the cost effectiveness and environmental benefits of abatement and treatment measures.

B. The Director may approve the plan and shall give priority to those plans which will be implemented in coordination with measures undertaken in section 406 of the Act.

4-40-30 RESPONSIBILITIES

A. DAMLR is responsible for:

1. Developing program policy and procedures addressing issues related to the acid mine drainage plan program; and

2. Notifying the AD-SCs and FOs, at the time they are informed of the annual distribution of funds, of the total acid mine drainage plan amounts available for each *State*.

B. The FODs are responsible for the review and approval of the acid mine drainage plan funding requests.