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	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-14 Rescinded Transmittal Number: 144 Date: 11/26/92

Subject: Oversight of the States' Permanent Programs

Approval: [illegible] Title: Director

1. Purpose. The intent of this directive is to provide guidance to Field, Headquarters, and Technical Center personnel in monitoring, assisting, and evaluating the States' implementation, maintenance, and administration of approved State Programs.

2. Definition. None.

3. Policy and Procedures.

a. Background. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides that the Office of Surface Mining (OSM) will assist the States with the implementation and maintenance of approved State programs and verify that the States' programs are being administered and enforced in such a way to meet the requirements of the Act. To carry out these responsibilities, OSM has developed a plan of activities so that data on the States' activities can be collected and analyzed. Procedures for giving feedback to the States have also been developed so that the resulting information can be used by the States. These plans are attached and are titled "Plans and Procedures for the Evaluation of the States' Permanent Programs."

b. Procedures. Field Office Directors should plan and carry out their activities within the guidelines contained in the attached document.

Administrators of the Technical Centers should plan the reviews of the States' permitting and technical regulatory functions in conjunction with Field Office Directors. The actual review visits and other activities should be coordinated through the Field Office Directors.

Headquarters staff should direct all inquiries and information needs concerning a State through the Field Office Director.

3.b.

4. Reporting Requirements. Follow the requirements contained in the attached document.

5. References. Sections 502, 517 and 521 of the Act (P.L. 95-87).

6. Effect on Other Documents. This directive replaces the July 16, 1981, directive on the "Initial Period of Evaluation of State Inspection and Enforcement Programs" which was cancelled on March 22, 1982, and supersedes the temporary directive, "Oversight of States' Permanent Programs," with subject number of INE-14, transmittal number of 119, and dated April 28, 1982. The document, "Plans and Procedures for the Evaluation of the States' Permanent Programs," is not affected.

7. Effective Date. Upon issuance.

8. Contact. Chief, Branch of Inspection (FTS 343-5484).

MAR 5 1982

PLANS AND PROCEDURES FOR THE EVALUATION OF THE STATES' PERMANENT PROGRAMS

THE OFFICE OF SURFACE MINING
U.S. DEPARTMENT OF THE INTERIOR

Table of Contents

		Page
I	Introduction	1
II	General Oversight Information	2
III	Systems Review of Approved State Programs	3
	A) Inspection and Enforcement	3
	B) Permitting and Technical Standards	15
	C) Small Operator Assistance Program	18
	D) Abandoned Mined Lands Program	20
	E) Designating Lands Unsuitable	23
	F) Blasters Certification Program	25
	G) Program Management	26

I. INTRODUCTION:

The Surface Mining Control and Reclamation Act of 1977 (the Act, P.L. 95-87) created the Office of Surface Mining (OSM) in the U.S. Department of Interior to administer the programs and carry out the purposes of the Act. The Act also established programs for the reclamation of lands adversely affected by past mining practices, and for the protection of society and the environment from the adverse effects of new and ongoing surface coal mining operations.

Under the Act, a State may assume primary responsibility for regulation of coal exploration and surface coal mining and reclamation operations in a State. States with approved permanent regulatory programs, can also qualify to implement the State program for reclamation of abandoned mined lands. Procedures for submission and approval or disapproval of State regulatory programs are provided in 30 CFR Parts 731 and 732; requirements for State abandoned mined land reclamation plans are provided in 30 CFR Parts 884.

Once a State obtains approval of its permanent regulatory program, OSM's role becomes one of assistance to the State and verification that the Act's requirements are being met. This process of verification is commonly termed "oversight." OSM's responsibilities in its oversight role include the following:

- Assist the States in implementing a program to achieve the purposes of the Act. (Sec. 102(g).)
- Make those investigations and inspections necessary to insure compliance with the Act. (Sec. 201(c).)
- Make inspections of any surface coal mining and reclamation operation as may be necessary to evaluate the administration of approved State programs. (Sec. 517(a).)
- Issue cessation orders for violations which create an imminent danger to the health or safety of the public, or cause or reasonably are expected to cause imminent environmental harm to land, air, or water resources. (Sec. 521(a).)
- Enforce any part of a State program not being enforced by the State. (Sec. 504(b) and 521.)
- Promulgate and implement a Federal program for a State if such State fails to enforce or maintain its approved State program. (Sec. 502(a).)

This document sets forth OSM's policies and procedures in meeting its oversight responsibilities. These policies and procedures are subject to change as experience is gained and as the affected programs evolve.

This document covers only OSM's programmatic oversight activities for approved State permanent regulatory programs and abandoned mined land reclamation programs on non-Federal and non-Indian lands. Separate oversight documents or manuals will be prepared covering financial management procedures or responsibilities. This document does not include all oversight activities on Federal and Indian lands. The discussion of any financial management procedures or requirements are only for purposes of clarification.

II. GENERAL OVERSIGHT INFORMATION

Coordination of Activites in State

To increase consistency and efficiency and to minimize duplication, all OSM operations in a State will be coordinated through the Director of the OSM State Office. OSM intends to conduct activities in a State with the least interruption of a State's operation and to minimize duplication of inspections, enforcement and administration of the Act.

Monitoring and Evaluation

Monitoring is the collection of program data to form a base to evaluate a State's regulatory performance. Broadly, data collection can be separated into field and administrative evaluative functions. Sources which OSM will use to monitor the State's performance will include:

- Oversight inspections,
- Program data furnished by the State,
- Data from other sources (individuals, citizen groups, industry) and
- Annual reviews.

Evaluations will be used to assist the State in implementing a program to achieve the purposes of the Act. Two types of evaluations will be utilized:

- Intermittent or periodic evaluations will consist of the day-to-day dialogue between the State and OSM in the resolution of issues and needs that are identified throughout the year or evaluation period. These evaluations will create a continuous feedback process in which problems can be corrected or questions resolved on an informal basis.

- Annual evaluations will consist of a review of the States' achievements during the preceding evaluation period. During each annual evaluation period, OSM staff will visit the State to review the entire State program and the activities conducted during the year. The evaluation will include a review of the intermittent or periodic

evaluations and an analysis of any continuing unresolved issues. The activities conducted by OSM, and the resulting evaluations of the State's systems will form the basis of the annual report documenting the State's implementation and maintenance of the approved program.

All inspections or investigations for evaluation purposes will be conducted in an objective, impartial and professional manner. OSM will document all results and will include any supporting data and analyses applicable to the evaluations. The State will have the opportunity to review and comment upon any findings and recommendations and these comments will be considered prior to issuing the final evaluation report.

III. THE SYSTEMS OF A STATE PROGRAM - SPECIFIC OVERSIGHT PROCEDURES

A. Inspection and Enforcement

a) Scope of Review.

OSM will monitor the State's inspection and enforcement procedures for compliance with the State's approved program and the requirements of the Act. The following is an indication of specific items that OSM will monitor.

1) Inspections

i) Inspection Frequency

ii) Inspection Reporting

iii) Citizen Complaint Procedures

iv) Ten-Day Notice Procedures

2) Enforcement

i) Enforcement Records and Procedures

ii) Civil Penalty Procedures

iii) Cases of Continued Non-Compliance

iv) Informal/Formal Hearings Procedures and Results

v) Permit Suspension and Revocation

3) Compliance with Environmental Protection Performance Standards

4) Staffing and Other Resource Requirements

b) Oversight Procedures

1) Inspections

The term "oversight inspections" may be defined as an on-site inspection of a randomly selected mine facility for the stated purpose of evaluating a given State's performance. Oversight will include a review or analysis of each State function from permit issuance through total bond release. A listing of oversight related inspections is included below followed by a brief discussion of the purpose and mechanisms of how each will be implemented.

- Field inspections based on statistical sampling methodology (includes permit review, partial and total bond release, and bond forfeiture inspections).
- Special inspections or case studies.
- Federal follow-up inspections (10-day notice and citizen complaint referrals to the State in which the State has completed appropriate enforcement action).

i) Statistical Sampling

Statistical sampling represents an important element within OSM's oversight plans. Instead of conducting inspections at all minesites in a State, OSM will use a sampling methodology that is based on the premise that programmed random inspections on statistically stratified samples will allow OSM to make valid inferences about the State's regulatory performance. OSM can maximize available resources and make valid judgements using the sampling methods. Oversight inspection is one method to identify trends, from which further monitoring levels may be based.

Each oversight inspection will include, as a component of the field evaluation process, a review of the respective permit. The purpose of the review is to familiarize the reclamation specialist with all pertinent aspects regarding the mining and reclamation plans of the operator and site as well as the consistency applied by the State in terms of the application of performance standards in the permit and reclamation efforts in the field.

ii) Special Inspections

Oversight or evaluative inspections will provide a measurement (after extensive analysis by OSM) of a State regulatory program. Should OSM identify programmatic deficiencies, additional field investigations may be required. Some problems may require special case studies or targeted Federal inspections. It should be emphasized that such investigations will be conducted after thorough discussion with the State.

iii) Federal Follow-up Inspections

Listed below are two types of non-mandatory Federal inspections that may be conducted if a problem is identified in the State's notification to OSM of the action taken to correct an alleged violation or the showing of good cause for taking no action.

- Violations referred to the State via a 10-day notice.
- Citizen complaints referred to the State.

Additionally, to monitor the State's procedures in handling citizen complaint referrals, Federal inspections will be conducted at mine sites, on a sampling basis, following the State's notification to OSM. (See item ii on page 9 for specific procedures.)

2) Monitoring of State Program Data

Some types of State furnished reports and information from other sources are essential in the day-to-day monitoring or oversight at the field inspection level. These are listed below.

i) Permit - The permit application and permit is the fundamental document that forms the basis of OSM's inspectable unit file (from which statistical samples are generated) and the basic source of field monitoring. It is essential that OSM have access to State permits required by PL 95-87.

ii) Inspection Report (State) - These reports will be used to determine the type, quantity, and associated results of State inspections of a given operation/permittee. Each report should indicate (1) if the inspection was complete or partial, and if partial, what aspects of the operation were reviewed (2) mining status (3) permittee and permit number (4) location by county (5) enforcement action taken (6) enforcement actions reaching satisfactory resolution.

iii) Notices of Bond Releases - The notices should be provided to OSM on a timely basis. These notices also include bond forfeitures. These are necessary for the inspectable units file.

iv) Results of Citizen Complaint Investigations - (Referred by OSM to the State)

v) Citizen Input - Both the Act and the Federal regulations outline important provisions for citizen input. OSM will continue to be sensitive and responsive to factual informational input provided by citizens either on a singular basis or those organized into special interest groups. This information will be considered in relation to specific program areas as well as the overall State program performance.

vi) Enforcement Monitoring - Federal oversight of enforcement activities, primarily a monitoring function, will consist of analysis of State enforcement actions from the citing of the violation, through the informal/formal Administrative appeals process, through the payment of the penalty, and to the termination of the violation or bond forfeiture. The reviews will consist of an analysis of all public documents pertaining to a particular violation that have been generated to date by State enforcement actions.

The monitoring of the enforcement activities will be conducted with the assumption that in an effective regulatory program, appropriate action will be taken by the State and if the violation is not corrected within a reasonable time, additional enforcement actions will be initiated promptly. The reviewers will look at (1) the time periods between the State's enforcement actions and the operator's compliance following the violation issuance, (2) the enforcement actions taken by the State in cases of continued noncompliance, and (3) bond forfeitures where operators fail to complete reclamation requirements.

Enforcement reviews will be conducted at the State Headquarters Office or where the violation paper work is located. The results of the reviews or audits will be made available to the State through scheduled meetings and will be incorporated into OSM's annual evaluation report. Given below are broad areas for consideration in the administrative analysis and documentation of State enforcement actions.

- Violations not assessed.
- Violations receiving assessments/ penalties.
- Violations on which informal hearings/ assessment conferences are requested.
- Violations that are appealed through the formal appeals process.
- Violations filed in State court for civil/criminal remedies.
- Violations on which the State forfeits the bond due to non-reclamation by the operator.

vii) Staff and Other Resources - From information provided by the State, OSM will monitor the State inspection and support staff levels. The approved State program contains the estimated staff levels to complete the inspection mandates of the Act. The State's inspection frequencies may also be used to monitor and recommend any deficiencies in this area. Other resources (vehicles, inspection equipment) will also be monitored to verify that adequate equipment resources are available to the State inspectors.

3) <u>Evaluations As Assistance to States</u>

Evaluation of the State's inspection and enforcement system includes all methods of field monitoring from routine oversight inspections through the administrative review of relevant State records. The evaluation is comprised of two components:

- On-going evaluation and,
- Annual review.

i) On-going Evaluation - OSM intends to work with the State on an on-going basis to identify possible programmatic deficiencies and devise corrective measures. This dialogue will provide the State with the earliest possible information and give it the maximum available time to begin corrective measures either within house or with OSM providing Federal assistance. The method of notification or feedback to the State of program deficiencies/ successes will be through the following mechanisms of information transfer:

- Joint inspections/ Federal Inspection Report - An objective and concise report reflecting the reclamation specialist's observations of the operator's compliance during on-site inspections. A copy will be provided to the State as part of OSM's continuing feedback process.

- Informal meetings between respective field inspection staffs - Immediate feedback via joint State/Federal inspections and meetings between State/OSM field inspection staffs.

- Issue meetings - supervisory State/OSM personnel.

ii) Annual Evaluation - OSM Headquarters will provide a written annual evaluation regarding the OSM State Director's evaluation of the State's inspection and enforcement system. While monitoring and evaluation will proceed throughout the year the annual evaluation will provide a summary report of program data accumulated within the year.

4. Required Federal Actions -

i) Federal Inspections

Although the State retains the primary enforcement responsibility during the permanent program, Federal inspections are mandatory in the following circumstances:

- If the State regulatory authority fails within 10 days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the appropriate OSM State Office.

- Upon the basis of information (oral followed by written complaint) provided to OSM by any person that supplies adequate proof that an imminent danger of significant environmental harm or imminent danger to the health or safety of the public exists and the regulatory authority has failed or is unable to take immediate, appropriate action.

* Follow-up inspections resulting from previous Federal enforcement actions taken by OSM personnel.

ii) Citizen Complaints Procedures

Citizen complaints received by OSM will be referred directly to the State agency. Upon receipt of a non-imminent environmental harm or danger to the public complaint by telephone, OSM personnel will record the citizen's name, phone number, operator/permittee involved, and specific nature and location of the complaint prior to referral to the State. Confidentiality will be maintained upon request by the citizen. A 10-day notice form will be sent to the designated State official or the information will be transmitted orally as determined by OSM.

Citizens alleging (by telephone or in writing) the existence of an imminent environmental harm or danger to the public will be referred to the State. The OSM representative will also contact the designated State official by telephone. The transmittal of this information will be documented by issuing a 10-day notice. The OSM representative will monitor the State's activity to investigate the alleged condition. Should the State fail or not be able to initiate immediate investigations within a reasonable time, then the OSM representative will conduct an inspection of the site. The designated State official will be notified of this action prior to the inspection.

Citizen complaints that provide adequate proof that an imminent danger of significant environmental harm or imminent danger to the public exists and that the State has failed to take appropriate action will require an immediate Federal inspection (Section 521(a)(1). The designated State official will be notified of this action prior to the inspection. If a Federal inspection is to be conducted, the citizen is to be notified and given the opportunity to accompany the inspector.

Written complaints received by OSM will be transmitted to the State via the 10-day notice format.

All 10-day notices referred to the State, resulting from a citizen complaint, will require written notification from the State to OSM regarding the actions taken to resolve the complaint. These reports will be reviewed by OSM and should problems be identified a follow-up inspection may be conducted.

Additionally, Federal inspections will be conducted, on a sampling basis, at mine sites following the State's notification of its action or the showing of good cause for not taking action. Each OSM State Director will determine the sampling scheme. The method used will be discussed with the State and the State will be provided an opportunity to accompany the Federal inspector on the sampling inspection.

iii) Ten-Day Notice

Notification to the State of observed violations, other than imminent danger of significant environmental harm or danger to the public, resulting from OSM oversight inspections will be effected through a 10-day notice in writing. Upon receipt of the notice the State has 10 calendar days (see 30 CFR 700. 15) to take appropriate action to cause the violation to be corrected or to show good cause for such failure and transmit notification of its action to the appropriate OSM State Office.

On December 1, 1981, changes in Federal enforcement regulations were proposed. 46FR58464. In the mean time OSM will follow the present regulations and the requirements below. During a Federal inspection which results from a 10-day notice previously sent to the State and the violation continues to exist and the State has failed to take appropriate action or show good cause, a Federal enforcement action may be taken for a violation of the same performance standard included in the original 10-day notice. Should other violations be noted, OSM will issue a new 10-day notice to the State.

On joint State/OSM inspections where the State inspector takes appropriate enforcement action on each violation, no 10-day notice is required. The results of OSM's oversight inspection including the number and type of violations and associated State enforcement actions as well as overall operator's compliance will be outlined in the inspection report written by the OSM inspector.

In the case of a State/OSM disagreement (i.e., existence of a violation or remedial measures to be taken, etc.) during a joint inspection, the OSM inspector will consult with his or her supervisor prior to a decision by OSM on whether or not to issue the 10-day notice. This may also require the supervisor to contact the appropriate State official in order to resolve disagreements or prior to concluding the decision. In no instance shall the OSM inspector discuss such disagreements in

the presence of the operator/permittee. The above procedure does not include violations which exhibit an imminent danger of significant environmental harm or danger to the public. Under such circumstances, if the State fails to take appropriate enforcement action, OSM will immediately issue a cessation order.

All 10-day notices will be provided directly to the local State field office maintaining jurisdiction in the geographic area of the alleged violation. Notices will not be issued to State inspectors. With the exception of personal delivery by OSM to the designated State official, all written notices and copies to the designated State official will be sent via certified mail. The State will have ten calendar days to take appropriate action (see 30 CFR 700.15 for computation of time). The 10-day period begins the day after the State receives written notification from OSM. Should the 10-day period expire on a Saturday, Sunday, or legal holiday, the notice will extend to the next regular working day (30 CFR 700.15). Violations noted on weekends, holidays, or other non-office hours will be transmitted to the designated State official during the next regular working day.

All 10-day notices to the State will require written notification from the State to OSM regarding the actions taken to resolve the alleged violation(s). These reports will be reviewed by OSM and Federal follow-up inspections may be conducted. OSM may request to accompany the State inspector on the 10-day notice inspection.

Inspections conducted by OSM that reveal "short term" violations (i.e., discharging "black" water, blasting, etc.) are noted as a particular enforcement problem during the permanent program. The operator will be advised of the violation and a 10-day notice will be given to the State. Evidence such as photographs and laboratory samples will be collected, and will be made available to the State upon request. When short term violations are noted, the State will be contacted immediately so that an enforcement action can be taken.

iv) Federal Enforcement

A notice of violation or cessation order shall be issued following a 10-day notice where, upon reinspection, the violation continues to exist and the State fails to take appropriate action to cause the violation to be corrected or to show good cause for such failure. (OSM is proposing to change the present Federal enforcement regulations as

noted above. If these proposed changes are completed, this section of the oversight plan will be be revised. Currently, Part 843 of the existing regulations apply for Federal enforcement procedures. Also, note the procedures in the preceding section on Ten-Day Notices.)

OSM inspection personnel are authorized to issue a cessation order for an imminent danger of significant environmental harm or danger to the public. The 10-day notice period shall be waived when the person informing the Secretary provides adequate proof that an imminent danger of significant environmental harm or imminent danger to the public exists and that the State has failed to take appropriate action.

v. Section 521(b) Procedures

Section 521(b) provides that a public hearing shall be held when information is made available that causes the Secretary to believe that violations of all or any part of an approved program results from a failure of the State to enforce such State program or any part thereof effectively.

OSM State Directors will be monitoring State activities and identifying potential and actual problems and assisting the States with correcting problem areas. If the State refuses or is unable to correct enforcement problems, OSM State Directors should be the first person to recommend a 521(b) proceeding.

OSM State Directors should:

1) be thoroughly familiar with the implementation, administration, maintenance and enforcement of any part of a State's approved program;

2) identify, discuss, and recommend corrective measures and time schedules for any deficiencies noted in the areas of the State's program;

3) recommend to the Director that a 521(b) proceeding be initiated if the State fails to cooperate with the process in (2) above or fails to accomplish the remedial measures within the agreed time periods;

4) fully inform citizens, citizen's groups, and industry of all problems and all activities to correct problems.

c. Reporting Requirements

1) Provided by the State

OSM must decide, in consultation with the States, the amount and type of information needed to prevent burdensome and unnecessary reporting while still providing adequate program data for evaluation. Individual State/OSM procedural agreements will determine the specific information handling procedures. The items listed below are those minimal and critical informational requirements as well as suggested reporting frequencies. Supplemental data will be obtained as required through special studies, case audits of State records, and program information required as a function of Federal regulatory grants to the States.

Permits - Each approved permit application and permit (including revisions) should be forwarded or made available promptly upon issuance to the OSM State Office. In the Western States, where the application and supporting documents are voluminous, only the permits will be sent to the OSM State Office. Exploration approvals or permits should also be forwarded.

Bond Release (total and partial) - Forwarded to the OSM State office as they occur. This approach will allow OSM to keep a current inspectable units file.

Bond Forfeiture Actions - Forwarded to OSM State office as they occur.

Inspection Reports - A copy of each should be provided to OSM weekly or as incorporated in individual State/OSM procedural agreements.

Permit Revocations - Forwarded to OSM State Office as they occur.

Enforcement Actions - Forwarded to OSM weekly.

Results of Citizen Complaint Inspections and Results of Ten-Day Notices Referred to the States

Policy Memoranda and Handbooks - Provided to OSM upon issuance by the State.

Supplemental Program Data - OSM will gather the following information by conducting audits of the State's records on a quarterly basis or the States may submit the informa- in summary format on a quarterly basis. This will be determined by State/OSM procedural agreement.

- Number of authorized inspection personnel - total by State and field office for the period.
- Citizen complaints - number received, inspected/cited.
- Assessment conferences - total number, percentage of requests compared to number of violations issued.
- Civil penalty assessment - number, dollar amount and percentage of violations receiving a penalty.
- Civil penalty collection - number, dollar amount of violations paid, number, dollar amount in escrow, and number, dollar amount referred for collection proceedings.
- Informal/formal hearings - number of hearings (both types) completed.
- State court - number of violations which are referred to State court for civil/criminal remedies.

2) Provided by OSM

OSM will supply the following information and reports on a routine basis to the State regulatory agencies.

- Ten-day notices.
- Federal inspection reports.
- Federal enforcement actions.
- Court decisions/actions resulting from OSM inspections or regulation changes.
- Policy and guidance memoranda.
- Citizen complaint investigation reports.

B. Permitting and Technical Standards

a. Scope of Review.

OSM will monitor the State's permitting program and technical regulatory functions for compliance with the State's approved program and the requirements of the Act.

An examination will be made of segments of a State program as follows:

1) Permit Application

2) Permit Processing Procedures

3) Administrative and Judicial Review

4) Alluvial Valley Floors

5) Performance Bonds - Amount, Bond Release, and Bond Forfeiture.

6) Prime Farmland Determination

7) Experimental Practices

8) Reclamation

b. Oversight Procedures

1) Permitting Program

The State's permitting program will be reviewed through a periodic review (approximately annually) of the State's policies and program implementation by an OSM evaluation team, and through permit monitoring conducted with the Inspection and Enforcement oversight. OSM will provide a summary report reviewing the State's permitting program and technical regulatory functions.

i) Evaluation Team.

Team Composition. Each review team will be composed of a Project Director (as team leader) and other selected technical personnel. It is anticipated that the team will be multidisciplinary in nature and consist of a core of approximately 4-5 people.

Scheduling. Every oversight study will be scheduled in advance by the Administrator of the OSM Technical Service Center and the Director of the OSM State Office. Reviews will be scheduled as follows:

- One oversight review approximately annually.
- Special review when necessary based on potential problems indentified in Inspection and Enforcement Oversight.
- Special review when necessary based on significant changes in procedures or authorities.

Duration of Field Visits. The duration will be determined by the amount of data to be reviewed, local field conditions within the State, and the nature of technical responsibilities to be investigated. It is anticipated that the average team visit duration during the annual review will be 1 to 2 weeks, with the potential for some follow-up inquiries to clarify any issues that may have been unresolved.

Emphasis will be placed on the time needed to conduct an effective evaluation rather than on any set formula. Every effort will be made to minimize disruption of the State's on-going activities.

ii) Notification. The State will be formally notified at least two-weeks prior to the field visit by the evaluation team. In advance of the arrival of the team, the State will be provided with evaluation topics, scope and dates of the evaluation, tentative team composition and evaluation schedule.

Evaluation outlines, adapted to the function or program to be evaluated, will be developed by the evaluation team and submitted to the State Director, at least one week prior to the field visit. The outline will contain sufficient detail to insure comprehensive review of the program to be evaluated.

iii) Evaluation Technique. The evaluation team will concentrate on those permit files and records contained in the OSM State Office. The evaluation process may also include interviews with State personnel, analysis of State Office records and files to obtain facts and data, and field reviews as a means to collect input for the evaluation. Contacts may also be made with external organizations using State and OSM services or interacting with State and OSM program efforts.

The evaluation team will discuss all findings and recommendations with a disignated official of the State regulatory authority before finalizing any reports. Any allegation of official misconduct or serious irregularity discovered during the course of the review should be

discussed privately with the State regulatory authority and submitted in writing to the State Director of the OSM State Office for any necessary follow-up investigation.

2) Experimental Practices

OSM will work with State regulatory authority personnel on an as needed basis to review requests for experimental practices. Each experimental practice will be jointly approved by the State regulatory authority and the Director of OSM. Periodic reviews of the status of each experimental practice will be scheduled in consultation with the State.

c) Reporting Requirements

All evaluation reports will be prepared by OSM summarizing the results of OSM permitting and technical oversight. The report will provide a concise statement of the general conditions found during the evaluation of the program and any identified program deficiencies. A statement of the methods employed and information sources used as the basis for the findings will be included.

d) Technical Assistance

OSM personnel will make every effort to be available on request to assist States in solving technical problems and in obtaining technical information. This assistance may center around such activities as experimental practices, lands unsuitable studies and hydrologic studies.

C. Small Operator Assistance Program

a) Scope of Review

The review of a State's Small Operator Assistance Program (SOAP) will be an evaluation of the extent to which the State has implemented and administered each provision of its approved SOAP program. To evaluate this system, OSM will review the following:

* Eligibility of small operators in a State;
* The State's program to inform potential small operators about SOAP assistance;
* Timeliness of assistance;
* Laboratory qualification procedure;
* Technical assistance;
* Complaints concerning SOAP;
* Contracting procedures; and
* Management of technical data generated by SOAP.

b) Procedures

Semi-annually - this evaluation will be a review of the reports noted in item c. The reports will be analysed to identify deviations from the approved State program requirements. The technical responsibilities of the State will also be reviewed. If necessary, there may be small operator minesite visits and laboratory inspections for data collection. During these reviews, the State will be notified of any problems and solutions for correction will be developed by the State and OSM. These reviews are intended to assist the State.

Annual reviews will consist of a thorough analysis of the total SOAP program using the same procedures noted above. The State's activities under the program during the preceding year will be compared to the approved program. The semi-annual evaluation and the State's handling of any noted problems will also be considered.

c) Reporting Requirements

1) Provided by the State

The States will submit to OSM the following information on a semi-annual basis:

* number of applicants;
* number of approved applicants;
* number of disapproved applicants;
* number of operators for whom assistance is contracted;
* number of small operators who received approved lab reports; and
* number of small operators who received permits.

2) Provided by OSM

An annual report will be prepared by OSM summarizing the State's activities under SOAP and the results of OSM oversight.

D. Abandoned Mined Lands Program

a) Scope of Review

OSM will monitor a State's activities, procedures, and reclamation progress for compliance with approved abandoned mined lands programs recognizing that on approval of the AML reclamation plan the State has authority to implement the provisions of the approved program.

As part of this system, OSM is required to monitor financial management, programmatic and administrative activities in connection with grants. OMB Circular A-95 (Revised) and OMB Circular A-102 (Revised) contain special activities to be conducted by States and requires special review or monitoring procedures by OSM.

The following areas of an approved AML program will be monitored:

i) Compliance with States Reclamation Program
ii) Annual Submissions of Projects
iii) Reclamation in Accordance with Grant Agreements
iv) Program of Previously Funded Projects
v) Public Involvement
vi) Administrative and Management Structure

b) Procedures

1) Annual Submission of Projects

The procedure for implementation of reclamation projects in accordance with approved State/Indian reclamation plans will involve a three step process. The first step is the identification of specific projects in an annual submission. The second step requires a grant application and award of funding for each project through a State/Indian reclamation grant. In the third step States/Tribes prepare detailed design plans and carry out project construction.

ANNUAL SUBMISSION

States/Tribes submit annual work plans that include proposals for each new project to be undertaken during the budget year and progress reports for each continuing project. The annual submission will allow (1) appropriation of funds necessary to support each State's/Tribe's proposed activities and (2) review and consideration of proposed projects by OSM prior to formal application for funding under a State Reclamation Grant. To allow preparation of budget requests by OSM, annual submissions will be requested on a schedule determined by the Director and in conformance with the Federal budget cycle.

2) Review of Annual Grant Applications

The State, through the annual grant application, lists the projects to be reclaimed, including a general description of each project, its priority evaluation, estimated costs, estimated benefits, and lands or interests to be acquired. OSM is responsible for reviewing and assuring that the submissions are complete.

3) Grant Administration

On a periodic basis, OSM representatives will determine if the State is complying with the grant conditions. The scope of work will be reviewed to see if it is being implemented in a timely manner. The State's management systems will be reviewed to determine compliance with OMB Circular A-102 requirements and appropriate civil rights laws and Treasury Circulars. Emphasis will be placed on assuring that the State's contracting systems comply with Attachment O of A-102 and that the financial recordkeeping system clearly shows the flow of Federal funds.

On a periodic basis OSM will assist the State in identifying any changes that may be required in the grant agreement.

The State will submit quarterly progress reports. The reports are financial reports (SF-269 or SF-271) and narrative reports (OSM-81). The State is responsible for assuring that such reports are submitted in a timely manner.

OSM is responsible for reviewing the reports for accuracy, completeness, accomplishments of the program and fulfillment of the grant agreement.

Section 405(i) of PL 95-87 directs the Secretary through his designated agents, to monitor the progress and quality of the program. In order to comply, OSM may conduct initial project visits to familiarize its agents with projects.

4) Sampling of Projects for Reclamation Progress and Quality

To monitor the results of the State's AML program, OSM will, on a frequency determined by agreement between OSM and State, conduct reviews of projects from application for funds to completion of reclamation. This will include joint OSM/State site visits at on-going and completed projects.

Should problem areas be identified, States will be given an opportunity to respond or take corrective measures.

5) Assistance

OSM is responsible for providing assistance to States to improve the implementation of the approved AML program.

The emphasis for assistance to States will be on developing strategies to overcome problems inhibiting efficient and/or effective AML operations and the sharing of successful strategies.

E. Designating Lands Unsuitable

a. Scope of Review

The review of the State's system for designating lands unsuitable (Section 522 of the Act, and the State program) for all or certain types of surface coal mining will include an evaluation of the extent to which the State has implemented, administered and enforced this provision. Specific items that OSM will review are as follows:

- Petitions filed;
- Geographic areas within petitions;
- Petitions not accepted for full processing;
- Timeliness of process determination;
- Claims for substantial legal and financial commitments;
- Coordination with permitting process;
- Claims for valid existing rights;
- State's data base and inventory system;
- Criteria used during initial processing;
- State's public hearing procedures;
- Final decisions on petitions;
- Economic, environmental and coal resources statements; and
- Interagency/intergovernmental coordination.

b. Procedures

OSM will use the following procedures to evaluate this system:

1) Review semi-annual reports submitted by the State giving details on petitions submitted and processed by State;

2) Observe State procedures and processes during periodic or as needed review meetings rating overall effectiveness; and

3) Discuss State system with State officials during annual review meetings.

c. Reporting

The States will submit semi-annual written reports to OSM containing the following information:

1) Number and identification of petitions received;

2) Number of petitions accepted for full processing after initial review;

3) Final decisions on petitions;

4) Number of claims filed and accepted for substantial legal and financial commitment;

5) Number of claims filed and accepted for valid existing rights.

F. Blasters Certification Program

The regulations are being reviewed for needed changes concerning this system. When the revision is complete, this system will be included in the oversight program.

5. Program Management

a. Scope of Review

Review of the management aspects of a State's approved regulatory program will include an evaluation of the extent to which the State has implemented and administered each element of the State program according to the organization structure, staffing levels, and working agreements with other agencies. Specific items to be reviewed are:

* Number of personnel to administer the State program;
* Type and number of technical specialists to administer the program;
* Number of clerical and administrative support;
* Number of inspectors;
* Permitting staff to process the expected workload;
* Coordination between functions of the State program; and
* Organizational changes, staffing changes.

b. Procedures

To properly evaluate this portion of a State's program, many sources of information will have to be used. OSM will employ the following sources and methods to evaluate this State system:

1) Semi-annual reports - OSM will review and analyse reports containing staffing, organizational structure, change in the coal industry that could affect staffing levels, and State procedures that could affect the approved State program (budget restrictions, personnel reductions, reorganizations, etc.)

2) Periodic visits - If needed, OSM will periodically visit the State for a review of procedures and processes noting overall effectiveness in terms of staffing and management.

3) Annual review - As a part of the annual review of the total State program, this system will be discussed and analysed with State officials. Input from the reviews of other State systems (I&E, AML, SCAP, will be used to determine deficiencies.

Each review will be intended to assist the State in evaluating the State's performance. The approved State program will also be reviewed for any needed changes or modifications.

c. Reporting

The States will submit semi-annual staffing levels and organizational structure with job titles and functions for each position. The reports should contain the information outlined in item (b)(1) above.