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	U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-13 (RESCINDED) Transmittal Number: 359 Date: 07/21/87

Subject: Oversight of "More Stringent" Provisions of Approved State Programs

Approval: **Title:** Director Acting

1. Purpose.

This directive sets forth the policy regarding the extent to which OSMRE will evaluate how the States enforce provisions in their approved State program which are more stringent than the Federal standards established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Federal regulations at 30 CFR Chapter VII.

2. Definitions.

More stringent. In the context of this directive, the term applies to any State statute, rule or standard that establishes greater or additional rigor, strictness or severity than the minimum national standards established under SMCRA and 30 CFR Chapter VII. Section 505(b) of SMCRA states that any provision of any State law or regulation which provides for more stringent land use and environmental controls and regulation of surface coal mining and reclamation operations than do the provisions of the Act or Federal regulations shall not be construed to be inconsistent with the Act.

3. Policy/Procedures.

Based on the requirements of SMCRA and the regulations, OSMRE must, in fulfilling its oversight responsibilities, evaluate how a State administers and maintains its approved State program. This is so, notwithstanding the fact that certain provisions in the State's program may be "more stringent" than their Federal counterparts.

The underlying principle of SMCRA is to establish minimum national standards for surface coal mining and reclamation. It is the mandate of section 503(a) of SMCRA that States achieve at least this minimum level of environmental control and regulation. Section 505 of SMCRA also provides that the State laws and regulations which require more stringent land use and environmental control will not be considered inconsistent with the Act or the regulations.

Provisions of an approved State program which are more stringent than provisions of SMCRA or the Federal regulations govern regulation of surface coal mining operations in that State. OSMRE's role in its oversight mode is thus to evaluate how well the State enforces the provisions of its State program, including those more stringent provisions. Therefore, Assistant Directors for Field Operations through Field Office Directors must evaluate how the States

implement, administer and enforce all the provisions of a State's approved program even if the State's provisions are more stringent than those of the Federal program.

It should be noted that 30 CFR 900.12 specifies that provisions of approved State regulatory programs or permits pursuant to an approved State regulatory program may be enforced by the Secretary or his authorized agents pursuant to sections 504(b) and 521 of SMCRA and 30 CFR Part 842. Therefore, OSMRE may be required to enforce State provisions which are more stringent. Exceptions to this obligation and this directive include areas specifically exempted by SMCRA in Section 528, as amended, and those more stringent State provisions not derivative of SMCRA. For example, OSMRE will evaluate the State's enforcement of more stringent provisions concerning air pollution caused by wind erosion, but not with emissions from a duct or stack because SMCRA does not regulate air pollution from these sources.

Also it should be noted that the regulations at 30 CFR 732.17 provide that should a State wish to modify its more stringent provisions to be no less effective than the Federal provisions, it may submit program amendments to OSMRE. The procedures for this are established under 30 CFR 732.17.

4. Reporting Requirements. None.

5. References. None.

6. Effect on Other Documents. Supersedes and replaces memorandum of February 1, 1983, to Field Office Directors from the Assistant Director, Program Operations and Inspection, entitled "State Program Oversight."

7. Effective Date. Upon Issuance.

8. Contact. Chief, Division of Regulatory Programs, (202) 343-5351.