	U. S. DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	Subject Number: INE-35 Transmittal Number: 640 Date: OCT 19 1990

Subject: Ten-Day Notices

Approval: [signature] Title: Director

1. PURPOSE. This Directive establishes procedures for the issuance, evaluation, and informal review of ten-day notices in States with approved regulatory programs.

2. SUMMARY OF CHANGES. This Directive revises and supersedes Directive INE-35, Transmittal Number 534, dated March 29, 1989. The significant revisions are as follows:

a. Sections 3.d. and 3.e. have been added to include additional definitions for the terms "appropriate action" and "good cause" including the need to address improvidently issued permits.

b. Section 4.b. has been revised to specify that ten-day notices (Standard Form IE-160) shall not be issued in response to citizen complaints and permit defects. Separate procedures for using a "ten-day notice letter," applicable to these situations have been added as sections 4.c.(4) and 4.c.(5).

c. Section 4.c.(3)(b) has been revised to require Field Offices to transmit requests for informal review by telefax to the Branch of Inspection and Enforcement at Headquarters and to include in the required Field Office briefing package copies of relevant portions of the approved permit and State laws and regulations.

d. Section 4.c.(6) has been added to allow needed visits to a minesite before, during and after the ten-day notice period and to clarify that States will be notified that a Federal minesite visit related to a ten-day notice will be conducted and that the State may participate.

3. DEFINITIONS.

a. Ten-day Notice. Standard form IE-160 (3/81) used in accordance with 30 CFR 842.11 and 843.12(a)(2) to notify a State regulatory authority that an authorized representative of the Secretary has reason to believe that a person is in violation of any requirement of the Act, the State program, or any permit condition imposed under that program, where the information was not furnished by a citizen and the violation is not the result of a permit defect.

b. Ten-day Letter. A letter used in accordance with 30 CFR 842.11 and 843.12(a)(2) to notify a State regulatory authority that an authorized representative of the Secretary has reason to believe that a person is in violation of any requirement of the Act, the State program, or any permit condition imposed under that program where the information was furnished by a citizen or the violation is the result of a permit defect.

c. Reason to believe. An authorized representative of the Secretary shall have reason to believe that a condition, practice, or violation exists if available information would, if true, constitute an imminent danger or harm or a violation of the State program. See 30 CFR 842.11(b)(2).

d. Arbitrary, capricious, or an abuse of discretion means with respect to a State response to a ten-day notice or letter, that a State has acted: (1) irrationally in that the State's interpretation of its program is inconsistent with the terms of the approved program or any prior State interpretation recognized by the Secretary, or (2) without adhering to correct procedures, or (3) inconsistent with applicable law, or (4) without proper evaluation of relevant criteria.

e. Appropriate action.

(1) As provided under 30 CFR 842.11(b)(1)(ii)(B)(3), "appropriate action" means enforcement or other action authorized under the State program to cause a violation to be corrected.

(2) "Other actions" are those actions which are specifically approved in the State program in lieu of enforcement action and will cause the violation to be corrected. For example, unless bond forfeiture has been approved in an approved program as an action that may be used in lieu of an enforcement action, it would not be considered an appropriate action. See 53 FR 26733.

(3) For the purposes of evaluating State responses to ten-day notices involving improvidently issued permits, appropriate action means the State has taken, or is diligently in the process of taking action under the State program equivalents to 30 CFR 773.20 and 773.21, or if the State program does not contain such equivalents, action as effective as that required under 30 CFR 773.20 and 773.21. See 30 CFR 843.21(d); 54 FR 18456.

f. Good cause.

(1) As provided under 30 CFR 842.11(b)(1)(ii)(B)(4), good cause includes: (i) under the State program, the possible violation does not exist; (ii) the regulatory authority requires a reasonable and specified additional time to determine whether a

violation of the State program exists; (iii) the regulatory authority lacks jurisdiction under the State program over the possible violation or operation; (iv) the regulatory authority is precluded by an administrative or judicial order from an administrative body or court of competent jurisdiction from acting on the possible violation, where that order is based on the violation not existing or where temporary relief standards of the State counterparts to section 525(c) or 526(c) of the Act have been met; or (v) with regard to abandoned sites as defined in 30 CFR 840.11(g), the regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State program.

(2) For the purpose of evaluating State responses to ten-day notices and letters, examples of "good cause" would include:

(i) the possible violation does not exist if the regulatory authority provides facts which demonstrate that the conditions addressed in the ten-day notice are not a violation under the approved State program. In those instances in which the Field Office Director concludes that the State program is inconsistent with the Act or Federal regulations to the extent that the violation is not explicitly addressed and is allowed under the approved program, the Field Office Director shall, within ten days, prepare a draft under 30 CFR 730.11(a) or 30 CFR 732.17 to require the approved program to be corrected.

(ii) the regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program exists is appropriate where, for example, the regulatory authority needs additional time or technical or laboratory analysis. The Field Office Director should specify the time allowed and monitor the time to assure that the State's response is received within the additional time period;

(iii) the regulatory authority lacks the jurisdiction under the State program over the possible violation or operation in light of the interpretation of a provision contained in an approved State program. If the Field Office Director concludes that the State program is inconsistent with the Act and Federal regulations to the extent that the State does not have jurisdiction over the violation or operation, the Field Office Director shall, within ten days, prepare a draft under 30 CFR 730.11(a) or 30 CFR 732.17 to require the approved program to be corrected.

(iv) the regulatory authority asserts that action is precluded by an administrative or judicial order. The Field Office Director shall review whether the order was (a) based on a finding that the violation does not exist, (b) granted by a court

or administrative body of competent jurisdiction (e.g., with the judicial or administrative right to decide the matter), and (c) consistent with the temporary stay standards established in the State's counterpart to sections 525(c) or 526(c) of the Act; and

(3) For the purpose of evaluating State responses to ten-day notices involving improvidently issued permits, good cause means any reasonable factual or legal impediment to taking action under State program equivalents of 30 CFR 773.20 and 773.21, excluding the lack of State program equivalents to those sections. In applying the improvidently issued permit rule, consideration may be given to the other good cause criteria under definition 3.e.(1) above, with the exception just noted, but evaluations will be governed by the "any reasonable factual legal impediment" standard, not the express terms of the definition in 3.e.(1).

g. Permit Defect. Any procedural or substantive deficiency in a permit-related action taken by the regulatory authority (including issuance of a permit, permit revision, permit renewal, or transfer, assignment, or sale of permit rights). Examples include: (a) a failure to follow the procedural requirements of the approved program; (b) a lack of a written finding required before for an action or situation can be approved in the permit; (c) lack of technical information, tests, plans, or other information which is required by the approved program to support a specific finding that was made or action that was taken as part of the permit approval process; (d) approval of designs or mining and reclamation practices which are inconsistent with the approved program; and (e) an error in the analysis of technical or other information or plans.

h. Programmatic Issue. The systemic implementation of an aspect of an approved program in a manner which OSM believes is inconsistent with the Secretary's interpretation of the approved program, or an omission in the State program of a requirement of the Act or Federal regulations resulting in the State's inability to take enforcement against certain types of violations or to perform certain regulatory functions. In both cases, either a 732 letter has been issued or the State has made a written commitment and submitted a schedule to amend its program and is adhering to such commitment.

4. POLICY/PROCEDURES.

a. Background. On August 15, 1988, a final rule became effective (53 FR 26728, July 14, 1988), which amended the Federal inspection and enforcement regulations to establish a uniform standard by which OSM will evaluate State responses to ten-day notices. According to this standard, a State response to a ten-day notice will be accepted as constituting appropriate action or good cause unless the State has acted in a manner which is

arbitrary, capricious, or an abuse of discretion under the State program. The rule also contains examples of certain measures taken by the State which would comprise "appropriate action" and "good cause" and establishes a process by which States may request informal review of OSM's determination that the State failed to take appropriate action in response to a ten-day notice or show good cause for such failure. See 30 CFR 842.11(b)(1)(ii)(B)(1) and 843.12(a)(2).

b. Policy. Except as provided below, an authorized representative shall issue a ten-day notice or ten-day letter to the regulatory authority whenever there is reason to believe that a violation of the Act, the State program or a permit condition exists. A regulatory authority's response to a ten-day notice or letter shall constitute "appropriate action" to cause a violation to be corrected or "good cause" for failure to do so unless a determination is made in writing that the regulatory authority's response is arbitrary, capricious, or an abuse of discretion under the State program.

A ten-day notice (Standard Form IE-160) shall not be issued under the following circumstances:

(1) Imminent Danger/Harm. When a person provides adequate proof that an imminent danger or harm exists and the regulatory authority has failed to take appropriate action. In this case, a Federal inspection is required immediately.

(2) Deferrals. When a State inspector agrees to promptly take appropriate action to cause a violation to be corrected as a result of a joint State/OSM inspection and such action is taken within ten-days.

(3) Citizen Complaints. When a citizen complaint, which does not qualify under paragraph (1) above is received in writing (or orally followed in writing). Such complaints shall be addressed in accordance with the ten-day letter procedures under section 4.c.(4) of this directive.

(4) Permit defects. Where defects contained in permits issued by the regulatory authority are identified, such problems shall be addressed in accordance with the ten-day letter procedures under section 4.c.(5) of this directive. However, in cases involving multiple violations of which one or more of the violations are not permit defects, no need exists for issuing a separate ten-day letter; rather, the permit defect should be included in the ten-day notice being issued for the remaining violations.

(5) Programmatic Issue. When a 732 letter has been issued or the written schedule committed to by the State regulatory authority is being met, Field Offices shall notify the

regulatory authority in writing of any additional violations observed during Federal inspections which are subject of the program amendment and which may require appropriate action to be taken after the State has amended its program.

c. Procedures.

(1) Issuance of Ten-day Notices and Ten-day Letters.

(a) Where the information used as the basis for a ten-day notice or ten-day letter originates from administrative review of State inspection and enforcement documents, the authorized representative shall take reasonable steps to ensure such information is current, which may first require contacting the regulatory authority to verify case facts. Where the information used as a basis for a ten-day notice or ten-day letter originates from a joint inspection, the OSM reclamation specialist shall, prior to leaving the mine site, identify those areas in which he/she believes a violation may exist. If, subsequent to leaving the minesite after a joint inspection, the reclamation specialist determines an issue exists which was not discussed with the State inspector and which warrants a ten-day notice or ten-day letter, the State inspector shall be informed of the additional issue and if the State inspector agrees to take appropriate action within ten days, the reclamation specialist shall defer to the State inspector's action.

(b) Ten-day notices or ten-day letters shall be either hand delivered or sent by certified mail to the appropriate official at the local State office with jurisdiction over the operation. Concurrently, a copy of each ten-day notice or ten-day letter shall be provided to the permittee in accordance with Directive INE-3. OSM evidence collected to support a ten-day notice shall be made available to the State for its discretionary use.

(c) The ten-day notice or letter period shall commence on the day following receipt by the State and expire ten calendar days thereafter in accordance with the time computation provisions under 30 CFR 700.15.

(d) Field Office Directors shall establish systems to effectively monitor the expiration of the ten-day periods for State responses to ten-day notices and ten-day letters. For each ten-day notice or ten-day letter, a separate case file shall be established which contains chronologically all documents and correspondence associated with the case.

(e) A subsequent determination that informing the State about an alleged violation would have been more appropriate using a ten-day notice letter rather than a ten-day notice (or

vice versa) does not affect the responsibilities of the State, or the operator, or OSM to address the underlying allegation.

(2) State Ten-day Notice and Ten-day Letter Responses.

(a) Ten-day notices and ten-day letters require a written response from the regulatory authority within the ten-day period. Interim responses may be accepted as good cause in accordance with 30 CFR 842.11(b)(1)(ii)(B)(4)(ii) where the regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program exists (e.g., to perform technical or laboratory analysis).

(b) If no response is received near the end of the ten day period, the Field Office should attempt to contact the regulatory authority to determine the status of the response. Failure by the regulatory authority to respond to a ten-day notice or ten-day letter shall not prevent the authorized representative from making a determination whether the standards for appropriate action or good cause have been met and will constitute a waiver of the regulatory authority's right to request an informal review under 30 CFR 842.11(b)(1)(iii).

(c) In those instances in which an operator has violated a performance standard or other State program requirement not explicitly addressed or covered in a permit (e.g., a haul road is not included in the permit area) or the permit does not apply the performance standard to the entire permit area (e.g., run-off from all areas are not directed to a sedimentation structure) or the operator has violated the terms of a permit or approved mining and reclamation plan, the appropriate response would be an enforcement action. The possibility that the regulatory authority may, at some point in the future, allow a revision of the permit to allow the practice does not negate the requirement for an enforcement action. Such enforcement action should require the permittee to cease the unauthorized practice and may provide a reasonable time for the permittee to either perform any remedial actions necessary to conform with the approved permit or to diligently submit and obtain approval of a permit revision which, if approved, would authorize the practice.

(d) Unless laboratory analysis of samples taken during a joint inspection subsequently confirms the existence of a violation, violations alleged in a ten-day notice or ten-day letter which have been corrected or are no longer present when the regulatory authority conducts its ten-day notice or ten-day letter inspection will constitute good cause for not taking appropriate action. Field Offices may visit minesites to confirm the absence of such violations as specified in section 4.c.6 of this directive.

(e) The definitions of appropriate action and good cause should provide clear guidance for evaluating State ten-day notice responses in most cases. However, since the examples contained in the definitions are not necessarily exhaustive, they must be evaluated in the context of (and governed by) the arbitrary, capricious, or abuse of discretion standard. Any ten-day notice for which it appears the regulatory authority has responded in a manner which is arbitrary, capricious, or an abuse of discretion under the State program shall be immediately reviewed by the Field Office Director who will be responsible for concurring in the final written determination. When applying the arbitrary, capricious or abuse of discretion standard in deciding whether a State's response is appropriate the Field Office Director shall provide an explanation of what aspects of a State's response are arbitrary, capricious, or an abuse of discretion and shall state the basis on which this conclusion is drawn.

(f) Field Offices should complete evaluations of State responses to ten-day notice and ten-day letters within ten days unless factors exist requiring expertise unavailable in the Field Office (i.e., Solicitor, technical services). Upon conclusion of each State ten-day notice or ten-day letter response evaluation, the authorized representative, or the Field Office Director in the case of an inappropriate response, shall immediately transmit a written determination to the regulatory authority by certified mail. Unless a cessation order for an imminent danger/harm is required pursuant to 30 CFR 843.11 or unless the regulatory authority has failed to respond to the ten-day notice or ten-day letter, no Federal inspection shall be conducted (except that a minesite visit may be conducted under section 4.c.(6)(a) of this directive), nor any enforcement action issued with respect to any ten-day notice or ten-day letter until the time to request informal review of the written determination by the Deputy Director, Operations and Technical Services has expired or if informal review has been requested, until the Deputy Director has rendered a decision.

(g) The Field Office Director shall monitor the implementation of State actions which formed the basis for determining that the State's response was appropriate. In those instances in which the State fails to implement the required action as indicated in the response within a specified and reasonable time, the action shall be determined to be inappropriate. At that time the Field Office Director shall inform the State that failure to implement actions within a reasonable time has caused the response to be considered inappropriate and that a Federal inspection will be ordered unless the State appeals under 30 CFR 842.11(b)(1)(iii)(A).

(3) Informal Review of Written Determinations.

(a) Where the regulatory authority disagrees with the Field Office's written determination and requests an informal review by the Deputy Director, Operations and Technical Services under 30 CFR 842.11(b)(1)(iii), such request and any State explanation of its appeal must be received at the appropriate Field Office or the Office of the Deputy Director in Washington, D.C. within five days after receipt of the written determination. The five day period shall commence on the day following receipt of the authorized representative's written determination and expire five calendar days, thereafter in accordance with the time computation provisions under 30 CFR 700.15.

(b) Field Office Directors shall be responsible for:

1. Recording on the request for review, the date of receipt at the Field Office;

2. Telefaxing a copy of any request to the Branch of Inspection and Enforcement at Headquarters within one working day after receipt and at the same time mailing or telefaxing a copy to the Assistant Director for Field Operations; and

3. Within three working days after the receipt of any request or notification from Headquarters that a request for informal review has been submitted to the office of the Deputy Director, preparing and forwarding via overnight mail or carrier to the Branch of Inspection and Enforcement at Headquarters:

(a) the original request for informal review together with any State explanation of its appeal when the request is filed with the Field Office;

(b) a copy of the complete ten-day notice or ten-day letter record in chronological order, including relevant maps and photographs;

(c) a copy of the State response to the ten-day notice or ten-day letter and synopsis of the case including a discussion of the Field Office's rationale supporting its written determination;

(d) copies of the relevant portions of permits and State laws and regulations on which the ten-day notice was based; and

(e) the authorized representative's written determination concerning the State's response.

(c) The Assistant Director for Field Operations shall be responsible for providing any comments to the Deputy Director within three days after receiving notification that a request for informal review has been submitted. An information copy should also be forwarded to the Branch of Inspection and Enforcement at Headquarters.

(d) The Assistant Director for Program Policy, through the Branch of Inspection and Enforcement, shall be responsible for:

1. Immediately notifying the appropriate Field Office Director when a request for informal review has been received at Headquarters and requesting that the information required under section (3)(b)3.(a)-(d) above must be forwarded to the office of the Deputy Director within three days;

2. As necessary, conducting briefings or preparing briefing materials for the Deputy Director; and

3. Preparing the written explanation in support of the Deputy Director's decision.

(e) The Deputy Director, Operations and Technical Services shall be responsible for:

1. Affirming, reversing, or modifying the written determination by the Field Office within 15 days after receipt of any request for informal review. Information submitted by the State which was not available to the authorized representative at the time of the written determination of the inappropriate response shall be considered and responded to by the Field Office prior to the Deputy Director's decision.

2. Ordering a Federal inspection where it is decided that the regulatory authority has failed to take appropriate action or show good cause; and

3. Providing a written explanation of the informal review decision to the regulatory authority, the permittee, the Field Office, and if the ten-day notice or ten-day letter resulted from a request for a Federal inspection under 30 CFR 842.12, to the person who made the request.

(4) Citizen Complaints.

(a) Citizen complaints received in writing which provide reason to believe that a violation exists, but which do not allege (and provide adequate proof) that an imminent danger or harm exists and that the regulatory authority has failed to take appropriate action, shall be immediately transmitted to the

regulatory authority by a ten-day letter. The letter shall explain that unless within ten days the regulatory authority notifies the Field Office in writing that it has taken appropriate action to cause the alleged violation to be corrected or shows good cause for not taking such action, a Federal inspection will be conducted.

(b) Field Office Directors shall establish systems to effectively monitor the expiration of the ten-day periods for State responses to citizen complaints. For each citizen complaint, a separate case file shall be established which contains chronologically all documents and correspondence associated with the case.

(c) If the information in a citizen's compliant is not sufficient to form a reason to believe that a person is in violation of the Act, the approved State program, or permit, an informational letter should be transmitted to the State with the citizen's concern and the citizen informed of the transmittal.

(5) Addressing Permit Defects. The following provisions shall be applied to address permit defects except those determined to have been issued due to fraud or collusion, or situations where the permit does not specifically address a practice which is governed by a performance standard. In either case, the performance standard will control and enforcement action by the State regulatory authority is required.

(a) Where alleged defects are identified in permits issued by the regulatory authority during oversight inspections or during the course of administrative permit reviews, the Field Office shall notify the regulatory authority of the alleged defect by ten-day letter. The letter shall explain that a Federal inspection will be conducted unless within ten days, the regulatory authority notifies the Field Office in writing that it has taken the appropriate action described below to correct the alleged defect or shows good cause for not taking such action.

(b) Where the permit or permit application contains insufficient information to provide the basis for approval by the regulatory authority (e.g., insufficient stability analysis, insufficient baseline hydrologic information), reflects State regulatory authority approval of a design or construction that is inconsistent with the approved program, or approval of a practice that is inconsistent with the approved program (e.g., the permit allows the operator to leave a highwall), appropriate action by the regulatory authority to correct a permit defect shall, if allowed by the approved program, at a minimum consist of the following actions:

1. the permittee has been notified in writing that an application for a permit revision is required within a reasonable and specified period of time that does not exceed thirty days unless the regulatory authority identifies an exceptional circumstance that would require a longer period of time to submit the application for revision;

2. a time period has been established within which the regulatory authority will approve or disapprove the application for a permit revision that does not exceed thirty days unless the regulatory authority identifies an exceptional circumstance that would require a longer period of time to approve or disapprove the application for revision;

3. where needed, interim steps, including withdrawal or modification of approval to use an area of the permit or of a practice allowed by the permit have been imposed to minimize any potential environmental harm until a permit revision can be approved; and

4. a schedule and period of time have been established that is consistent with the State program equivalent of 30 CFR 843.12 for remedial actions required to bring the operation into compliance with the approved program and the permit as revised.

(c) In those instances in which the permit defect is not corrected within the reasonable time, appropriate interim steps are not imposed, or remedial actions to bring the operation into compliance with the revised permit are not completed, the Field Office would conduct an inspection and, if appropriate, proceed with enforcement action.

(d) The regulatory authority may request a reasonable and specified extension of time for its response to a permit defect letter where additional time is necessary to make the written finding required under the State analog to 30 CFR 774.11(c).

(e) Where Federal inspection and enforcement is required, but is not sufficient to remedy a programmatic permitting problem, Field Offices may initiate proceedings under 30 CFR Parts 732 or 733 as appropriate. Following the appropriate programmatic changes by the State, the State shall inform the operator of the changes and require that the operation be brought into compliance with the approved State program.

(6) Federal Minesite Visits.

(a) Where needed, Field Offices may visit minesites when Field Offices determine the State has supplied

inadequate information upon which: to determine whether there is basis to warrant issuance of a ten-day notice or ten-day letter; to confirm a State response that a violation does not exist or has been abated during the ten-day notice or ten-day letter period; or to demonstrate that the regulatory authority has taken action to ensure that violations cited as a result of a ten-day notice or letter are properly abated. OSM shall notify the State of the minesite visit and the information sought.

(b) Before conducting Federal inspections ordered as a result of inappropriate State ten-day notice responses, including those ordered by the Deputy Director pursuant to requests for informal review, where practical, the Field Offices shall notify the regulatory authority of the fact that an inspection is scheduled and provide the regulatory authority the opportunity to accompany the Federal inspector.

(c) If, as a result of the inspection conducted under paragraph (b) above, it is found that a violation continues to exist, the Federal inspector shall issue an enforcement action unless the State inspector takes appropriate enforcement action during or before the Federal inspection.

5. REPORTING REQUIREMENTS. None.

6. EFFECT ON OTHER DOCUMENTS. Supersedes Directives INE-35, Transmittal Number 534, March 29, 1989, and INE-27, Transmittal Number 397, November 10, 1987.

7. REFERENCES.
a. 30 CFR 700.15;
b. 30 CFR 842.11(b)(1)(ii)(B)(1) and (B)(4);
c. 30 CFR 842.11(b)(1)(iii); 842.11(b)(2);
d. 30 CFR 843.12(a)(2);
e. 30 CFR 773.20; 773.21;
f. 30 CFR 843.21;
g. 53 FR 26728, July 14, 1988;
h. 54 FR 18438, April 28, 1989;
i. 30 CFR 774.11(c);
j. 30 CFR 700.15; and
k. 30 CFR Parts 732 and 733

8. EFFECTIVE DATE. Upon Issuance.

9. CONTACT. Chief, Branch of Inspection and Enforcement, (202) 208-2550 (Commercial) or 268-2550(FTS).

10. KEYWORDS. Ten-day notices; appropriate action; good cause; arbitrary, capricious, or abuse of discretion; informal review; permit defect; improvidently issued permit; citizen complaints.

11. LIST OF APPENDICES. None.

U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

DIRECTIVES SYSTEM

Subject Number: INE-35-1

Transmittal Number: 681

Date: JUL 22 1991

Subject: Ten-Day Notices

Approval: [signature] Title: Director

Directive INE-35, Transmittal Number 640, dated October 1, 1990, addressing permit defects is amended to make the procedures for Ten-Day Letters consistent with those established for Ten-Day Notices under Section 4.c.(2)(g) of the Directive.

Accordingly, paragraph 4.c.(5)(c) is changed to read:

(c) In those instances in which the permit defect is not corrected within the reasonable time, appropriate interim steps are not imposed, or remedial actions to bring the operation into compliance with the revised permit are not completed, the action shall be determined to be inappropriate. At that time, the Field Office Director shall inform the State that failure to implement the actions in the State's Ten-Day Letter response previously determined to be appropriate has now caused the response to be considered inappropriate and therefore, a Federal inspection will be immediately ordered unless the State requests informal review under 30 CFR 842.11(b)(1)(iii)(A).

CHANGE NOTICE

	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-35-2 Transmittal Number: 700 Date: DEC 19 1991

Subject: Ten-Day Notices

Approval: [signature] **Title:** Director

To delete provisions that allow the issuance of Ten-Day Letters as an alternative form of a Ten-Day Notice, the following changes are made to INE-35, Transmittal No. 640, dated October 19, 1990.

Paragraph:	Change:
2.b.	Delete paragraph
2.c.	Renumber to 2.b.
2.d.	Renumber to 2.c.
3.b.	Delete paragraph
3.c.	Renumber to 3.b.
3.d.	Renumber to 3.c.
3.e.	Renumber to 3.d.
3.f.	Renumber 3.e.
3.g.	Renumber to 3.f.
3.h.	Renumber to 3.g.
4.b.	Delete "ten-day letter" in second line
4.b.(3)	Delete paragraph
4.b.(4)	Delete paragraph
4.b.(5)	Renumber to 4.b.(3)
4.c.	Delete references to "ten-day letter"

CHANGE NOTICE