

	<b>U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT</b>	<b>Subject Number:</b> INE-35
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<b>DIRECTIVES SYSTEM</b>		
<b>Subject:</b> Ten-Day Notices		
<b>Approval:</b> Joseph G. Pizarchik		 <b>Title:</b> Director

1. **Purpose.** This directive establishes policy and procedures for the issuance of ten-day notices (TDNs) to state and tribal regulatory authorities (RAs), the evaluation of RA responses to those notices, and informal review of Field Office Director determinations with respect to those responses.

The Office of Surface Mining Reclamation and Enforcement's (OSM's) TDN regulations are set forth at 30 CFR 842.11 and 843.12. In general, absent an imminent danger or harm scenario, OSM must issue a TDN to an RA when it has reason to believe a violation exists or when, on the basis of a Federal inspection, it determines that a violation exists (and OSM has not issued a previous TDN for the same violation). OSM must conduct a Federal inspection or reinspection, as appropriate, when, in response to a TDN, the RA fails to take appropriate action to cause the violation to be corrected or to show good cause for failure to do so. See 30 CFR 842.11(b)(1) and 843.12(a)(2).

On July 14, 1988 (53 FR 26728), OSM published amended Federal inspection and enforcement regulations that established a uniform standard for evaluation of RA responses to TDNs. Under that standard, which appears in 30 CFR 842.11(b)(1)(ii)(B)(2), OSM will accept an RA response to a TDN as constituting appropriate action to cause a violation to be corrected or good cause for failure to do so unless the RA has acted in a manner that is arbitrary, capricious, or an abuse of discretion under the approved regulatory program. The rule also identifies measures that would constitute appropriate action [see 30 CFR 842.11(b)(1)(ii)(B)(3)] and circumstances under which the RA would have good cause for not taking appropriate action [see 30 CFR 842.11(b)(1)(ii)(B)(4)]. Finally, the rule establishes a process by which an RA may request informal review of a Field Office Director's determination that the RA failed to take appropriate action in response to a TDN or show good cause for failing to do so. See 30 CFR 842.11(b)(1)(iii). Since promulgation of the rule, OSM has issued two versions of this directive and three change notices, all of which have been rescinded.

2. **Summary of Changes.** This is a new directive.

3. **Definitions.**

a. **Appropriate action**, as provided under 30 CFR 842.11(b)(1)(ii)(B)(3), means enforcement or other action authorized under the approved regulatory program to cause a violation to be corrected.

b. Arbitrary, capricious, or an abuse of discretion generally means, with respect to an RA response to a TDN, that the RA has acted—

(1) Irrationally in that the RA's interpretation of its program is inconsistent with the terms of the approved program or any prior RA interpretation recognized by the Secretary of the Interior (Secretary);

(2) Without adhering to correct procedures;

(3) Inconsistent with applicable law; or

(4) Without a rational basis after proper evaluation of relevant criteria.

c. Authorized representative, in the context of this directive, means a person certified by the Director or the Director's designee to—

(1) Conduct Federal inspections of surface coal mining and reclamation operations, including associated facilities and records;

(2) Issue TDNs; and

(3) Take appropriate enforcement actions, including issuance of notices of violation and cessation orders.

d. Director means the Director of OSM.

e. Federal inspection, in the context of this directive, means:

(1) An inspection conducted by an authorized representative of OSM under 30 CFR 842.11(b)(1) when an RA fails to take appropriate action, or to show good cause for such failure, in response to a TDN;

(2) An inspection conducted by an authorized representative of OSM under 30 CFR 842.11(b)(1) when a person provides adequate proof that an imminent danger or harm exists, and the RA has failed to take appropriate action; or

(3) Any other inspection conducted by OSM or jointly by OSM and an RA.

f. Field Office means a Field Office or any equivalent OSM organizational unit with responsibility for state or tribal regulatory program oversight.

g. Field Office Director means the manager in charge of a Field Office or equivalent organizational unit with responsibility for state or tribal regulatory program oversight.

h. Good cause. Under 30 CFR 842.11(b)(1)(ii)(B)(4), an RA has good cause for not taking enforcement or other action within ten days to cause a violation to be corrected if—

(1) The alleged violation does not exist under the approved regulatory program;

(2) The RA needs a reasonable, specific additional amount of time to determine whether a violation of the approved regulatory program exists (for example, the RA may need more than ten days to conduct a technical review or obtain laboratory analyses);

(3) Under the approved regulatory program, the RA lacks jurisdiction over either the alleged violation or the operation;

(4) An administrative review body or court of competent jurisdiction has issued an order legally precluding the RA from acting on the alleged violation, provided that the order is based either on the premise that the violation does not exist or a determination that the temporary relief standards of the approved regulatory program counterparts to section 525(c) or 526(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or Act) have been met; or

(5) With regard to abandoned sites as defined in 30 CFR 840.11(g), the RA is diligently pursuing or has exhausted all appropriate enforcement provisions of the approved regulatory program.

i. Permit defect means a type of violation consisting of any procedural or substantive deficiency in a permit-related action taken by the RA (including permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights). Examples include, but are not limited to:

(1) A failure to follow the procedural requirements of the approved regulatory program.

(2) A failure by the RA to make any written finding that is required in order for the RA to approve the permit.

(3) A lack of technical information, tests, plans, or other information that is required by the approved regulatory program to support a specific finding that was made or action that was taken as part of the permit approval process.

(4) Approval of designs or mining and reclamation practices that are inconsistent with the approved regulatory program.

(5) An error in the analysis of technical or other information or plans.

j. Regional Director means the senior executive with responsibility for OSM regional operations.

k. Ten-day notice means a form OSM uses to notify an RA under 30 CFR 842.11(b)(1)(ii)(B)(I) and 843.12(a)(2) whenever OSM has reason to believe a violation exists or when, on the basis of a Federal inspection, OSM determines that a violation exists and OSM has not issued a previous TDN for the same violation.

#### 4. Policy.

a. Subject to the qualifications contained in Section 4.g., below, an authorized representative of the Secretary must issue a TDN to the RA whenever the authorized representative has reason to believe that a violation of the Act, the approved regulatory program, or a permit condition exists. This requirement applies to all requests for Federal inspections that OSM receives from citizens under 30 CFR 842.12, provided such requests meet the “reason to believe” standard established in 30 CFR 842.11(b)(2) (i.e., the facts alleged by the citizen, if true, would constitute a violation). In addition, an authorized representative of the Secretary must issue a TDN to the RA whenever the authorized representative, on the basis of a Federal inspection, determines that a violation of the Act, the approved regulatory program, or a permit condition exists and OSM has not issued a previous TDN for the same violation. When the TDN process is initiated as a result of a citizen complaint, the authorized representative also must follow the procedures set forth in OSM Directive INE-24, “Response to Citizen Complaints in Primacy States.”

b. Consistent with 30 CFR 842.11(b)(1)(i) and 843.12(a)(2), the TDN process applies equally to all types of violations.

c. The TDN process applies to all lands for which the RA has primary regulatory authority, including Federal lands for which a cooperative agreement under 30 CFR Part 745 is in effect.

d. The Field Office must consider the RA’s response to a TDN to constitute appropriate action to cause a violation to be corrected or good cause for failure to do so unless the Field Office makes a written determination (TDN determination), in accordance with 30 CFR 842.11(b)(1)(ii)(B)(I), that the RA’s response is arbitrary, capricious, or an abuse of discretion under the approved regulatory program. Under the arbitrary, capricious, or abuse of discretion standard, OSM as a reviewer will not substitute its judgment for that of the RA, unless the RA’s response is arbitrary, capricious, or an abuse of discretion as defined in 3.b., above. In general, OSM will make a finding of appropriate action or good cause if the RA presents a rational basis for its decision, even if OSM might have decided differently had it been the RA.

e. Subject to the qualifications contained in Section 4.g., below, when an authorized representative has reason to believe a violation exists or determines, on the basis of a Federal inspection, that a violation exists, the authorized representative must conduct a Federal inspection or reinspection, as appropriate, and, if the alleged violation or violation in fact exists or continues to exist, take an appropriate enforcement action to cause abatement of the violation:

(1) If the authorized representative, with Field Office Director concurrence, determines that the RA, in response to a TDN, failed to take appropriate action or show good cause for failing to do so; and

(2) Either the time (five days) within which the RA may request informal review by the Regional Director has expired or the Regional Director affirms the authorized representative's written determination.

f. After evaluating the RA's response to the TDN, if the Field Office Director concludes that an approved regulatory program is inconsistent with the Act or Federal regulations to the extent that an alleged violation or violation is not explicitly addressed and is allowed under the approved program, the Field Office Director must elevate the issue to the Regional Director for possible action under 30 CFR Part 732. When an RA fails to take appropriate action, or show good cause for such failure, in response to a TDN, in addition to following all other applicable policies and procedures in this directive, the Field Office Director must elevate the issue to the Regional Director for possible action under 30 CFR Part 733.

g. A TDN will not be issued under the following circumstances:

(1) Imminent danger/harm.

(a) The authorized representative must issue a cessation order under 30 CFR 843.11(a) if, on the basis of a Federal inspection, he or she finds any condition or practice, or any violation of the Act, the approved regulatory program, or a permit condition that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant, imminent environmental harm.

(b) A Federal inspection must be conducted immediately under 30 CFR 842.11(b)(1)(i) and (ii)(C) when a person provides adequate proof that:

I. An imminent danger or harm exists; and

II. The RA has failed to take appropriate action.

(2) Joint oversight inspections with the RA. An authorized representative will not issue a TDN when the RA's inspector takes appropriate action, before the inspection is completed, concerning a violation or possible violation observed during the course of a joint OSM/RA oversight inspection.

(3) Permit defects. OSM will not review pending RA permitting decisions and will not issue a TDN for an alleged violation involving a possible permit defect where the RA has not taken the relevant permitting action (e.g., permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).

(4) Previous issuance of a TDN that resulted in a federal inspection. When an authorized representative, on the basis of a Federal inspection, determines that a violation exists, the authorized representative will not issue a TDN under 30 CFR 843.12(a)(2) if a TDN has previously been issued to the RA for the same violation under 30 CFR 842.11(b)(1)(ii)(B). In that instance, the authorized representative must proceed directly to an appropriate enforcement action.

h. The computation of time under all provisions of this directive must conform to the requirements set forth in 30 CFR 700.15.

## 5. Responsibilities.

The following responsibilities must be carried out in accordance with the policies and procedures contained in this directive.

### a. Authorized Representative.

(1) Determine whether a citizen's request for a Federal inspection under 30 CFR 842.12 establishes "reason to believe" a violation exists under 30 CFR 842.11(b)(2).

(2) Determine whether a citizen has provided adequate proof that an imminent danger or harm exists, and that the RA has failed to take appropriate action, justifying an immediate Federal inspection in lieu of the TDN process.

(3) Issue TDNs whenever OSM has reason to believe a violation exists or when, on the basis of a Federal inspection, OSM determines that a violation exists and OSM has not issued a previous TDN for the same violation.

(4) Establish a separate case file for each TDN. The file must contain, in chronological order, all documents and correspondence, including e-mails, associated with the TDN.

(5) When appropriate, grant extensions of time up to 30 days for the RA to respond to a TDN. Track the RA's progress in completing all promised actions.

(6) Determine in writing, through consultation with program specialists, as necessary, and with the concurrence of the Field Office Director, whether an RA's response to a TDN meets or does not meet the standards for appropriate action or good cause, and transmit the written TDN determination to the RA and the permittee. If the TDN was a result of a citizen's complaint, the determination must also be transmitted to the citizen.

(7) Monitor the RA's implementation of the actions that formed the basis for a Field Office's determination that the RA has taken appropriate action or shown good cause. As appropriate, notify the RA of OSM's determination that the RA has failed to implement the actions upon which OSM's determination of appropriate action or good cause was based.

(8) Visit the mine site, as appropriate, to determine the adequacy of an RA's response to a TDN.

(9) Conduct the Federal inspections and reinspections described in this directive, and, when required, provide prior notification of an inspection to the RA and citizen, if applicable.

(10) Take appropriate enforcement actions.

b. Field Office Director.

(1) When appropriate, grant extensions of time of more than 30 days for the RA to respond to a TDN. Ensure that the Field Office tracks the RA's progress in completing all promised actions.

(2) Review and approve the authorized representative's written determination that an RA's response to a TDN does or does not meet the standards for appropriate action or good cause before that determination is transmitted to the RA, permittee, or citizen. Ensure that the authorized representative conducts a Federal inspection or reinspection and takes enforcement action, as appropriate.

(3) Evaluate the RA's response to the TDN, and if the conclusion is that an approved regulatory program is inconsistent with the Act or Federal regulations to the extent that an alleged violation or violation is not explicitly addressed and is allowed under the approved program, elevate the issue to the Regional Director for possible action under 30 CFR Part 732.

(4) When an RA fails to take appropriate action, or show good cause for such failure, in response to a TDN, elevate the issue to the Regional Director for possible action under 30 CFR Part 733, in addition to following all other applicable policies and procedures in this directive.

(5) Record the date of receipt of an RA's request for informal review of a TDN determination, when the RA sends such a request to the Field Office rather than to the Regional Director, and transmit the request to the Regional Director.

(6) Prepare and forward to the Regional Director and RA all required documentation concerning an RA's informal review request, as provided in Procedures 6.c.(2) below.

(7) When notified of a citizen's request for informal review of a decision not to inspect or take enforcement action, promptly transmit to the Regional Director all relevant documents, records, and files, along with a statement of the Field Office's rationale for deciding not to inspect or take enforcement action.

(8) Conduct consistency reviews with other Field and Regional Offices to ensure consistent treatment of similar violations.

c. Regional Director.

(1) Elevate, as appropriate, the issue to the Director for possible 30 CFR Part 733 action when an RA fails to take appropriate action or show good cause for such failure with respect to an alleged violation or violation.

(2) Consider possible 30 CFR Part 732 action when a Field Office evaluation of an RA's response to the TDN concludes that an approved regulatory program is inconsistent with the Act or Federal regulations to the extent that an alleged violation or violation is not explicitly addressed and is allowed under the approved program.

(3) Immediately notify the Field Office Director of any RA request for informal review of a TDN determination, and provide the Field Office with an opportunity to review and comment on any new information contained in the request.

(4) With respect to an RA's request for informal review, issue a written decision affirming, modifying, or reversing the Field Office's TDN determination. Provide a copy of the decision to the RA, the permittee, Field Office, and citizen (if applicable).

(5) Upon finding that the RA failed to take appropriate action or show good cause in response to a TDN, order a Federal inspection or reinspection.

(6) Maintain a tracking system pertaining to RA requests for informal review of TDN determinations.

(7) Promptly notify the Field Office Director when a citizen requests informal review of a decision not to inspect or take enforcement action, and request the Field Office Director to transmit all relevant documentation.

(8) With respect to a citizen's request for informal review, conduct the review and issue a written determination to the citizen. Provide a copy of the determination to the Field Office and the person alleged to be in violation, being mindful of the confidentiality considerations discussed in Procedures 6.d.(1)(a)IV below.

(9) Conduct consistency reviews to determine how other Regions have treated similar violations.

d. Director.

(1) Consider, based on an RD's recommendation, if the RA's failure to take appropriate action or show good cause with respect to an alleged violation or violation warrants initiation of the 30 CFR Part 733 process.

(2) Inform the Regional Director when to initiate the procedures of 30 CFR 733.12(b)-(g), as appropriate.

6. **Procedures.**

a. **Issuance of TDNs.**

(1) When must you issue a TDN?

Subject to the qualifications contained in Section 4.g. above, the authorized representative must issue a TDN whenever he or she has reason to believe that a violation of the Act, the approved regulatory program, or a permit condition exists, or when, on the basis of a Federal inspection, the authorized representative determines that a violation exists and OSM has not issued a previous TDN for the same violation.

(2) What should you do when you receive a citizen's complaint that alleges the existence of a violation?

When OSM receives information from a citizen that does not provide adequate proof of an imminent danger or harm, but the information establishes a reason to believe that a violation of the Act, the approved regulatory program, or a permit condition exists, the authorized representative must issue a TDN to the RA. The citizen should be notified in writing that the complaint was received and what action OSM is taking. OSM should include with the letter a copy of the TDN or an explanation of the reason(s) why no TDN was issued. When OSM receives a citizen's complaint under 30 CFR 842.12(a), OSM must also follow the procedures set forth in OSM Directive INE-24 and comply with the confidentiality requirements of 30 CFR 842.12(b).

(3) What should you do when a violation or possible violation is discovered during a joint inspection with the RA?

An authorized representative will not issue a TDN when the RA's inspector takes appropriate action, before the inspection is completed, concerning a violation or possible violation observed during the course of a joint OSM/RA oversight inspection.

(4) What should you do when you find out that the RA did not follow through with an action agreed upon at the time of an OSM/RA oversight inspection in which a violation was identified?

When an authorized representative discovers that the RA has not implemented a promised action that formed the basis for not issuing a TDN for a violation identified during the course of an OSM/RA inspection, the authorized representative must immediately issue a TDN.

(5) What should you do when you identify a permit defect or possible permit defect?

In terms of the TDN process, permit defects are handled like any other type of violation. Thus, subject to the qualifications contained in Section 4.g. above, an authorized representative must issue a TDN when: (a) the authorized representative has reason to believe a permit defect exists (whether based on an oversight inspection, an administrative permit review, a citizen's complaint, or any other information available to the authorized representative); or (b) on the basis of a Federal inspection, the authorized representative determines that a permit defect exists and OSM has not issued a previous TDN for the same violation. The authorized representative may not issue a TDN for a permit defect until after the RA has approved the relevant permitting action (e.g., permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).

(6) How do you deliver a TDN to the RA?

The Field Office must deliver each TDN by hand or certified mail to the appropriate official at the office of the RA with jurisdiction over the operation. With the written consent of the RA, the TDN may be delivered instead by e-mail or fax. Concurrently, the Field Office must provide a copy of each TDN to the permittee in accordance with Directive INE-3, "Furnishing Permittees with Copies of Inspection Reports and Ten-Day Notices," and to the citizen complainant in accordance with Directive INE-24, if applicable. In addition, any evidence that OSM collected in support of a TDN must be made available to the RA.

(7) What records must OSM keep?

OSM offices must establish a separate case file for each TDN. The file must contain, in chronological order, all documents and correspondence, including e-mails, associated with the TDN.

b. RA responses to TDNs.

(1) How do you calculate the time frame for the RA to respond to the TDN?

The ten days during which the RA must respond to a TDN will begin on the day following the RA's receipt of the notice and expire ten calendar days later in accordance with the time computation provisions of 30 CFR 700.15. Responses postmarked, e-mailed, or faxed on the last day of the period will be considered timely.

(2) May OSM grant an RA an extension of time to respond to a TDN?

OSM must accept interim responses as good cause under 30 CFR 842.11(b)(1)(ii)(B)(4)(ii) when the RA requests a reasonable and specified extension of time to decide whether a violation of the approved regulatory program exists and provides an adequate justification for the extension, including the status of the RA's investigation to date and the steps to be taken to determine whether the violation exists. The RA's justification for an extension must not be arbitrary, capricious, or an abuse of discretion. An authorized representative may grant an extension up to

an additional 30 days; extensions beyond the additional 30 days must be granted directly by the Field Office Director. The justification for any extension must be fully documented, and the Field Office must track the RA's progress in completing all promised actions.

(3) What if the RA does not respond in ten days?

If the Field Office has received no response near the end of the ten-day period, the Field Office should contact the RA to determine the status of the response. The RA's failure to respond within 10 days will not prevent the authorized representative from making a determination, with Field Office Director concurrence, as to whether the RA has met, or not met, the standards for taking appropriate action or showing good cause for not doing so, and the failure to respond within 10 days will constitute a waiver of the RA's right to request informal review under 30 CFR 842.11(b)(1)(iii).

(4) How long does OSM have to evaluate an RA's response to a TDN, and what must it do upon completion of its evaluation?

Evaluations of RA responses to TDNs should generally be completed within 10 days unless there is a need for special expertise (e.g., legal assistance or technical reviews). If, upon completion of the evaluation, OSM determines that the RA has or has not taken appropriate action or shown good cause for failing to do so, the authorized representative must, with Field Office Director concurrence, immediately transmit the determination to the RA and the permittee by e-mail, fax, or certified mail. The determination must provide an explanation of what aspects of the RA's response are arbitrary, capricious, or an abuse of discretion and state the basis for that conclusion. The TDN determination must also be provided to the citizen if the TDN was a result of a citizen's complaint.

(5) Are RA responses to TDNs based upon permit defects evaluated differently than responses to TDNs based upon other types of violations, including violations of performance standards?

No. All RA responses to TDNs are evaluated under the same "appropriate action" and "good cause" standards set forth at 30 CFR 842.11(b)(1)(ii)(B).

(6) When may you conduct a Federal inspection or reinspection as a result of an RA's response to a TDN?

If OSM determines that the RA has neither taken appropriate action nor shown good cause for failing to do so—and the RA has not requested informal review by the Regional Director and the time (five days) for requesting review has expired; or upon a request for informal review, the Regional Director has affirmed the Field Office's determination—then the authorized representative must conduct a Federal inspection or reinspection and take enforcement action, as appropriate. If the RA does not respond to the TDN within 10 days, the authorized representative must immediately conduct the inspection or reinspection and take enforcement action, as appropriate.

(7) May the authorized representative follow up on the RA's response to a previously issued TDN?

The authorized representative should monitor the RA's implementation of the actions that formed the basis for the determination that the RA has taken appropriate action or shown good cause. If the RA does not implement an action indicated in its TDN response within a reasonable time, the authorized representative, with Field Office Director concurrence, must inform the RA in writing, in accordance with 30 CFR 842.11(b)(1)(ii)(B)(I), that the RA has not met the standard for appropriate action or shown good cause. In that case, the authorized representative must conduct a federal inspection or reinspection and take enforcement action, as appropriate.

(8) May an authorized representative visit the mine site, and examine relevant records and files, to determine the adequacy of the RA's response to a TDN?

Yes. The authorized representative may visit the mine site, and examine relevant records and files, to determine the adequacy of the RA's response to the TDN. The authorized representative must notify the RA in advance of the planned mine site visit.

c. RA requests for informal review of Field Office TDN determinations.

(1) How does an RA request informal review of a Field Office's TDN determination on an RA's response to a TDN?

Under 30 CFR 842.11(b)(1)(iii)(A), the RA may request that the Deputy Director conduct informal review of a Field Office's determination that the RA has neither taken appropriate action in response to a TDN nor shown good cause for not doing so. As indicated in Directive OPM-5, "Delegations of Authority," the authority to conduct those reviews and render a final decision has been delegated to the RD. The RA must submit the request and any accompanying explanation to the appropriate Field Office or Regional Office within five days after the RA receives the Field Office's TDN determination. As provided by 30 CFR 700.15, the five days will begin with the day following the RA's receipt of the Field Office's determination and will expire five calendar days later, excluding Saturdays, Sundays, and holidays. Responses postmarked, e-mailed, or faxed on the last day of the period are considered timely.

(2) What procedures should the Field Office Director follow with respect to an RA's request for informal review?

In connection with an RA's request for informal review, the Field Office Director will follow the procedures below, as applicable—

(a) Record the date of receipt on the request for informal review.

(b) Fax or e-mail a copy of the request for informal review to the Regional Director within one working day after receipt.

(c) Prepare and forward the following items via overnight mail or carrier (or by e-mail when feasible) to the appropriate contact at the Regional Office within three working days after receipt of the request for informal review (or within three working days after receipt of notification from the Regional Office that the RA has submitted a request for informal review):

I. The original request for informal review, together with any accompanying explanation (when the request is filed with the Field Office);

II. A copy of the complete TDN record, in chronological order, including relevant maps and photographs;

III. A copy of the RA's response to the TDN;

IV. Copies of the relevant portions of permits and state or tribal laws and regulations upon which the TDN was based;

V. The TDN determination that the RA did not take appropriate action in response to the TDN or show good cause for not doing so; and

VI. A synopsis of the case, including a discussion of the rationale for the Field Office TDN determination.

(d) Simultaneously send the RA copies of the documents in (c)(I) through (V), above, if those documents are not otherwise available to the RA.

(3) What procedures should the Regional Director follow with respect to an RA's request for informal review?

In connection with an RA's request for informal review, the Regional Director will follow the procedures below—

(a) Immediately notify the appropriate Field Office Director when an RA submits a request for informal review of a TDN determination to the Regional Office.

(b) Provide a copy of that request and any accompanying information to the Field Office.

(c) Affirm, reverse, or modify the TDN determination within 15 days after receipt of any request for informal review. In general, the Regional Director must base the informal review decision upon the same documentary/evidentiary record that was before the Field Office, together with the RA's written request for informal review. If the RA's request for informal review contains supplemental information, the Regional Director should provide the Field Office with an opportunity to review and comment on any new information that was not available when

the TDN determination was made. The Regional Director should not provide the Field Office an opportunity to review his or her decision prior to issuance.

(d) Order a Federal inspection or reinspection when the Regional Director decides that the RA has failed, in response to a TDN, to take appropriate action or show good cause for not doing so.

(e) Provide the RA, the permittee, and the Field Office with a written explanation of the decision. If the TDN resulted from a request for a Federal inspection under 30 CFR 842.12, the Regional Director also must provide a copy of the decision to the person who made the request.

(f) Maintain tracking systems capable of readily providing summary statistical reports concerning the number, origination, outcome, and processing times of all requests for informal reviews.

d. Citizen requests for informal review of a TDN determination resulting in a decision not to inspect or take enforcement action.

(1) What procedures should the Regional Director follow in connection with a citizen's request for informal review of decision not to inspect or take enforcement action with respect to any violation alleged by that person in a request for a Federal inspection under 30 CFR 842.12?

(a) Upon receipt of a citizen's written request for informal review under 30 CFR 842.15 of a decision not to inspect or take enforcement action, which request must include a statement of how the person is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation and why the underlying decision merits review, the Regional Director will follow the procedures below—

I. Promptly notify the Field Office Director of the request for informal review.

II. Request the Field Office Director's prompt transmittal of all relevant documents, records, and files, along with a statement of the Field Office's rationale for deciding not to inspect or take enforcement action.

III. Conduct an informal review of the decision, and issue a written determination to the citizen within 30 days of receipt of the request for informal review.

IV. Provide a copy of the determination to the person alleged to be in violation, except that the identity of the person who requested informal review must not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(b) The Regional Director's determination constitutes a decision of OSM within the meaning of 43 CFR 4.1281 and must contain a statement of the citizen's right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

e. Federal inspections.

Before conducting a Federal inspection or reinspection, either as a result of a determination that the RA failed to take appropriate action in response to a TDN or show good cause for not doing so, or when a person provides adequate proof of an imminent danger or harm, OSM must notify the RA (and citizen, if applicable) that a Federal inspection is scheduled and provide the RA (and citizen, if applicable) with the opportunity to accompany the authorized representative. If the inspection or reinspection discloses that a violation exists, the authorized representative must issue an appropriate enforcement action, unless the RA's inspector takes an appropriate enforcement action during the inspection.

7. Reporting Requirements. None.

8. Effect on Other Documents. None.

9. References.

a. 30 CFR 700.15.

b. 30 CFR Part 732.

c. 30 CFR Part 733.

d. 30 CFR Part 745.

e. 30 CFR 840.11.

f. 30 CFR 842.11.

g. 30 CFR 842.12.

h. 30 CFR 842.15.

i. 30 CFR 843.11.

j. 30 CFR 843.12.

k. 43 CFR Part 4.

l. OSM Directive INE-3, "Furnishing Permittees with Copies of Inspection Reports and Ten-Day Notices."

- m. OSM Directive INE-24, "Response to Citizen Complaints in Primacy States."
- n. OSM Directive OPM-5, "Delegations of Authority."
- o. OSM Directive REG-23, "Corrective Actions for Regulatory Program Problems and Action Plans."

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

11. **Distribution**. Electronically.

12. **Appendices**. None.

**Contact**: Chief, Division of Regulatory Support, (202) 208-2866.