

United States Department of the Interior



OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



Date: October 13, 2020

Directive: INE-18

Title: Authorized Representatives

Approval: Lanny E. Erdos,
Principal Deputy Director

Signature: _____

Transmittal Number: 993

1. Purpose

This Directive establishes policy and procedures pertaining to the training and certification of inspectors and auditors as authorized representatives of the Secretary of the Interior. Under this Directive, only Office of Surface Mining Reclamation and Enforcement (OSM) employees who have been formally certified may conduct surface coal mining and reclamation inspections or reclamation fee audits. The Directive explains OSM policy and prescribes minimum certification requirements for inspectors and auditors to be certified as authorized representatives for the purposes of inspecting surface coal mining operations and associated facilities, auditing records, and issuing enforcement actions to implement sections 402, 502, 517, and 521 of the Surface Mining Control and Reclamation Act (SMCRA). The Directive also addresses which employees have the right of entry onto surface coal mining and reclamation operations and associated facilities for purposes of conducting inspections or audits or supervising or assisting in such activities.

2. Summary of Changes

This document makes substantive changes to a small portion of the existing Directive INE-18. Changes include:

- a. Clarified the OSM staff that have inspection authority and those individuals who have entry authority.
- b. Added criteria for Certification Standards to Qualify as Authorized Representatives.
- c. Updated organizational references.

3. Policy

It is OSM policy to ensure that:

- a. Inspections and audits are performed in accordance with OSM policy and procedures;
- b. Employees hired as potential authorized representatives after the effective date of this Directive have satisfactorily completed requisite training prior to being certified; and
- c. Only those certified as authorized representatives at the General Schedule 9 or greater, with inspection authority may issue TDNs and enforcement actions for violations of SMCRA or the applicable state or Tribal program or permit conditions required by SMCRA or the applicable state or Tribal program; only those with audit authority may conduct reclamation fee audits and issue TDNs and enforcement actions for those violations.

This Directive does not require certification of employees who are presently serving as authorized representatives. However, employees who receive less than fully successful performance evaluations may be subject to recertification by their supervisors.

Definitions.

- a. Authorized Representative. A person certified by the Director, or designee, to
 - (1) Enter and inspect surface coal mining and reclamation operations and associated facilities subject to regulation or oversight by OSM in accordance with sections 502, 517, and 521 of SMCRA and this Directive; or
 - (2) Enter facilities and audit records in accordance with section 402 of SMCRA, 30 CFR Part 870.16, and this Directive.
- b. Entry Authority for Inspectors. The authority to enter any surface coal mining and reclamation operation or associated facility subject to regulation or oversight by OSM, including accessing and copying records, inspecting monitoring equipment or any method or equipment used for exploration or mining, and collecting physical or electronic data, as required by sections 502, 507, and 517 of SMCRA and 30 CFR sections 721.12, 773.17(d) and 842.13.
- c. Inspection Authority. The authority to conduct inspections and issue Ten-Day Notices (TDN), Cessation Orders, and Notices of Violations and to provide remedies for such enforcement actions in accordance with 30 CFR Parts 842 and 843.
- d. Entry Authority for Auditors. The authority to enter, review, examine, and copy books and records for audit purposes in determining reclamation fee liability.

e. Audit Authority. The authority to conduct audits and issue TDNs and enforcement actions relating to reclamation fee liability and violations in accordance with 30 CFR 870.

f. Field Office Director. A Field Office Director or other employee with similar delegated responsibilities under OSM Directive OPM-5.

4. Responsibilities

a. Inspectors and Inspections. The Field Office Director is responsible for:

(1) Ensuring individuals are qualified to become authorized representatives by meeting the basic standards outlined in Appendix A.

(2) Establishing uniform certification standards for the jurisdictions they oversee, including requirements specific to their State and Federal programs and areas of competence that inspector candidates must demonstrate to qualify as an authorized representative.

(3) Developing individualized training, position descriptions, and certification document plans that will demonstrate an inspector candidate's competence to be certified using the Individual Development Plan process. The training and certification plans should include the type of formalized training inspector candidates will need and specify what areas of competence candidates must demonstrate. The plans shall take into account the inspector candidate's qualifications, background, and experience; and include methods to observe candidate performance. To the extent possible, have new inspector candidates (particularly entry-level candidates) complete OSM technical training courses to provide the candidates with fundamental knowledge needed to conduct inspections, issue TDNs and enforcement actions, prepare evidence, and provide testimony in court. In developing training, position descriptions, and certification documentation plans, distinguish between candidates for certification for entry-level inspectors from mid- and upper-grade inspector candidates with demonstrated successful inspection experience. Document the successful completion of each demonstrated element.

(4) Certifying inspectors under their purview as authorized representatives after they have successfully completed the training and certification document plan and demonstrated their knowledge and ability to properly prepare for, conduct, and accurately document the findings from surface coal mining and reclamation inspections. This authority cannot be re-delegated.

(5) Issuing or withdrawing inspector identification cards and badges as necessary and when an inspector is no longer serving in the capacity as an authorized representative. The Regional Director may also issue or withdraw inspector identification cards and badges.

b. Auditors and Audits. The Audit Manager is responsible for:

(1) Ensuring individuals are qualified to become authorized representatives by meeting the basic standards outlined in Appendix A.

(2) Establishing uniform certification standards for their office' jurisdictions, including requirements specifying areas of competence that auditor candidates must demonstrate to qualify as an authorized representative.

(3) Developing training and certification plans for new auditors that will provide acceptable auditor training and demonstrate the auditor candidate's competence to achieve certification as an authorized representative using the Individual Development Plan process. The plans shall include the type of formalized training and areas of competence candidates must demonstrate, taking into account the auditor's qualifications, background, and experience. The training and certification plans shall also include methods to be utilized by supervisors to observe each candidate's performance. To the extent possible, have new auditor candidates (particularly entry-level candidates) complete OSM technical training courses in order to provide the auditor with specialized training for OSM-specific auditing practices, and training for court testimony. The Audit Manager is also responsible for documenting the successful completion of all elements.

(4) Certifying auditors as authorized representatives after they have successfully completed the training and certification document plan and demonstrated their knowledge and ability to properly prepare for, conduct, and appropriately document the findings of site audits. This authority cannot be re-delegated.

(5) Issuing or withdrawing auditor identification cards. The Assistant Director, Finance and Administration, and the Chief, Division of Compliance Management, may also issue or withdraw auditor identification cards.

5. Procedures

a. Inspectors and Inspections.

(1) Right of Entry to Surface Coal Mining and Reclamation Operations.
The following individuals are hereby certified as having authority to enter surface coal mining and reclamation operations and associated facilities without additional certification:

(a) Any OSM staff approved by the Director; Deputy Director; Assistant Director, Program Support; Regional Directors; or Field Office Directors or similar positions to be required to conduct, supervise, or assist in oversight or technical assistance activities as a part of their assigned duties and responsibilities; and those certified in accordance with this Directive.

(b) Those employees of the Department of the Interior, Office of the Solicitor, representing OSM in SMCRA-related cases with authority to enter surface coal mining and reclamation operations and associated facilities, including Field Solicitors and Staff Attorneys.

(2) Authority to Conduct Inspections of Surface Coal Mining and Reclamation Operations. Consistent with this Directive, the following OSM employees may be certified as authorized representatives to perform inspections and issue TDNs and enforcement actions: Area Office Managers or team leaders; inspector supervisors; inspectors; and those OSM employees earning certification consistent with the Responsibilities outlined in this Directive.

(3) Inspector Certification Authority. The Director, Deputy Director, Regional Directors, and Field Office Directors may certify an OSM employee as an authorized representative upon satisfactory completion of the minimum training and certification requirements and may suspend or withdraw the certification of any authorized representative they supervise.

(4) Requirements for Inspector Certification as Authorized Representatives. To be certified as authorized representatives, inspector candidates must demonstrate their knowledge and ability to the satisfaction of the Field Office Director and, if applicable, their supervisor or team leader, to properly prepare for, conduct, and accurately document the findings from surface coal mining and reclamation inspections and be able to provide accurate and expert testimony in formal and informal hearings, as specified by the detailed certification criteria contained in Appendix A.

b. Auditors and Audits.

(1) Right of Entry to Surface Coal Mining and Reclamation Operations. The following individuals are hereby certified as having authority to enter audit units, surface coal mining and reclamation operations, and associated facilities, without additional certification:

(a) Director; Deputy Director; Assistant Director, Finance and Administration; Chief, Division of Compliance Management; Deputy Chief, Division of Compliance Management; Audit Manager; Senior Auditors; Reviewing Auditors; Auditors; and those certified in accordance with this Directive.

(b) Those granted authority for entry by the Director; Deputy Director; or Assistant Director, Finance and Administration.

(c) Employees of the Department of the Interior, Office of the Solicitor, representing OSM in SMCRA-related cases with authority to enter surface coal mining and reclamation operations and associated facilities, including Field Solicitors and Staff Attorneys.

(2) Authority to Perform Audits of Surface Coal Mining and Reclamation Operations. The following OSM employees are hereby certified as authorized representatives to perform reclamation fee audits and, when specifically delegated the authority by the Assistant Director, Finance and Administration, issue TDNs and enforcement actions relating

to reclamation fee liability: Audit Managers; Senior Auditors; Reviewing Auditors; Auditors; and those certified in accordance with this Directive.

(3) Auditor Certification Authority. The Director; Deputy Director; Assistant Director, Finance and Administration; Chief, Division of Compliance Management; Deputy Chief, Division of Compliance Management; and Audit Manager may certify an OSM employee as an authorized representative upon satisfactory completion of the minimum training and certification requirements and may suspend or withdraw the certification of any authorized representative they supervise.

(4) Requirements for Auditor Certification as Authorized Representatives. To be certified as authorized representatives, auditor candidates must demonstrate their knowledge and ability, to the satisfaction of both their immediate and second-level supervisors, to properly prepare for, conduct, appropriately document the findings of site audits, and provide accurate and expert testimony in formal and informal hearings as specified by the detailed certification criteria contained in Appendix A.

c. Authorized Representative Identification Cards.

(1) Newly certified authorized representatives shall be issued identification cards after successful completion of the certification process.

(2) Such credentials shall be presented upon entry to surface coal mining and reclamation operations and associated facilities or locations where the financial books and records are maintained for the mining and reclamation operation.

(3) Authorized representatives shall place their assigned identification/credential number on all TDNs, enforcement actions, and inspection reports.

(4) Entry authority and inspection and audit authority shall expire automatically when the employee ceases to be employed in one of the positions having such authority listed under paragraph 6.a.(1) and (2), and 6.b.(1) and (2) of this Directive or upon departure from OSM. Identification cards and badges, if applicable, will be surrendered by the incumbent to the Field Office Director or Audit Manager upon departure of the person with entry or inspector/audit authority. Authorized representatives who depart from the office that certified them must also surrender their credentials and must be recertified in accordance with this Directive if they function in a different capacity at a different office, or when returning after termination or resignation.

(5) When authorized representatives require replacement of their original identification or credential cards due to loss, theft, or damage, they will be issued new credentials by the issuing office. In these cases, issuing offices will utilize unnumbered credentials and will type the same number as on the original card and will indicate the words "replacement card" after the number.

6. Reporting Requirements None.

7. **Effect on Other Documents**

This Directive supersedes Directive INE-18, Transmittal Number 958, dated December 9, 2008.

8. **References** None.

9. **Effective Date** Upon signature.

10. **Distribution**

By electronic format. All OSM directives are publicly available at <http://www.osmre.gov/lrg/directives.shtm>.

11. **Appendices**

- a. Certification of Standards to Qualify as Authorized Representatives.

12. **Contact**

Program Support Directorate, Division of Regulatory Support and Finance and Administration
Directorate, Division of Compliance Management

Certification Standards to Qualify
As Authorized Representatives

1. Inspector Candidates. In order to qualify as a certified authorized representative, each inspector candidate must demonstrate the following:

a. A comprehensive knowledge and understanding of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and applicable state and Federal program regulations and policies, in order to:

(1) Readily identify regulatory program requirements applicable to each surface coal mining and reclamation operation;

(2) Readily locate and correctly cite applicable statutory or regulatory requirements or relevant policies;

(3) Understand the interrelationship among statutes, regulations, and related regulatory requirements; and

(4) Understand additional site-specific permit and reclamation plan requirements.

b. A thorough understanding of surface coal mining and reclamation operations in order to:

(1) Readily analyze the mining method and progression of the mining and reclamation operation and identify critical areas for inspection;

(2) Read and properly interpret maps, cross sections, monitoring reports, and other technical mining information; and

(3) Have a good knowledge of the types of equipment used in mining and their appropriate capabilities for mining and reclamation.

c. A thorough understanding of safety policies and practices in surface coal mining and reclamation operations.

d. The ability to conduct an effective inspection by:

(1) Conducting a thorough pre-inspection review, including review of any permit conditions, outstanding enforcement actions, or patterns of violations;

(2) Identifying all significant violations and collecting sufficient evidence to successfully defend any enforcement actions;

- (3) Properly preparing and transmitting ten-day notices, notices of violation, and cessation orders;
- (4) Prescribing appropriate timeframes to abate violations and discern if a violation is an immediate threat to human life or the environment, necessitating a cessation order;
- (5) Thoroughly documenting all conditions observed during the inspection, including violations, evidence collected, and relevant conversations; completing the Mine Site Evaluation Report or Mine Site Inspection Report; and entering the data into OSM's National Inspection and Enforcement Tracking System in a timely manner;
- (6) Displaying a professional attitude and conduct with the permittee, operator, public, and state officials;
- (7) Completed the "Basic Inspection Workbook" as made available through the National Technical Training Program; and
- (8) As available and based on funding, complete the courses recommended for inspectors as denoted in the "CAREER SERIES Training Guide for SMCRA Staff."

2. Auditor Candidates. In order to qualify as a certified authorized representative, each auditor candidate must demonstrate the following:

a. A comprehensive knowledge and understanding of SMCRA and implementing regulations, the Fee Compliance Audit Procedures Manual, audit policies, and professional audit standards in order to:

- (1) Readily identify reclamation fee requirements applicable to each surface coal mining and reclamation operation;
- (2) Readily locate and correctly cite applicable statutory or regulatory requirements or relevant audit policy; and
- (3) Understand the interrelationship among statutes, regulations, and related regulatory requirements.

b. The ability to conduct an effective reclamation fee audit to determine compliance status and potential reclamation liability by:

- (1) Conducting a thorough pre-audit review of the audit and enforcement records, including review of prior reclamation fee payments, outstanding enforcement actions, or patterns of delinquent reclamation fee compliance;
- (2) Conducting a thorough on-site review of a mining operation's records;

- (3) Appropriately documenting the findings of an audit;
- (4) Communicating the results of the audit in applicable reports;
- (5) Prescribing appropriate remedial actions to abate violations within reasonable timeframes;
- (6) Thoroughly documenting all conditions observed during the audit, including violations, evidence collected, and relevant conversations; and
- (7) Displaying a professional attitude and conduct with the permittee, operator, public, and state officials.