



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

**DIRECTIVES SYSTEM**

Subject Number:

INE-32

Transmittal Number:

679

Date: JUL 1 1991

Subject: Oversight Procedures for States' Implementation of the Applicant/Violator System Memorandum of Understanding

Approval:

Title: Director

1. Purpose. This directive establishes policy and procedures pertaining to evaluating the use of the Applicant/Violator System (AVS) by States with approved regulatory programs.

2. Summary of Changes. This directive has been modified to incorporate changes stemming from the redesign of the AVS, the reorganization of the Office of Surface Mining Reclamation and Enforcement (OSM), and to reflect provisions of current AVS Memorandums of Understanding (AVS MOU's) with State Regulatory Authorities (SRA's).

3. Definitions.

a. Applicant/Violator System (AVS). A nationwide applicant/violator computerized data system developed by OSM which contains information on permit applicants, permittees, operators, their owners and controllers, and violations designed to assist the user in making determinations under 30 U.S.C. 1260(c) or the State regulatory equivalent.

b. AVS Memorandum of Understanding (AVS MOU). A written agreement between OSM and the SRA setting forth the terms for OSM and the State to implement section 510(c) of the Act and the corresponding provisions of the State's program by maintaining and using the AVS. While a separate AVS MOU has been, or will be entered into with each SRA, a copy of the model AVS MOU document is attached hereto as an appendix (see Appendix 1).

c. Failure to comply in a systemic manner. A continuing pattern of noncompliance by an SRA, or one or more instances of noncompliance that result from or evidence a legal or policy decision which the SRA intends to apply to all similar cases. A failure to comply that appears to be an infrequent deviation from the SRA's general pattern of compliance and that does not result from or evidence a legal or policy decision of general applicability would be considered non-systemic.

d. Internal Controls. Methods and measures which are designed to prevent or detect waste, fraud, abuse, mismanagement, and other loss by assuring the safeguarding of resources; the accuracy and reliability of information; adherence to applicable laws, regulations, and policies; and promotion of operational

economy and efficiency. For example, accurate and complete data entry could be tested by comparing the application with the data input on the AVS for inconsistencies. Written internal control procedures should be developed for all regulatory programs, and appropriate supporting documentation maintained to ensure that the internal control procedures are being followed during the application and permitting process. Also, some documentation that is currently maintained on site could be used as part of an internal control, such as the AVS Users Manual which contains standards and coding conventions.

e. Settlement Agreement Between Save Our Cumberland Mountains, Inc., et al., and Manuel Lujan, Jr., Secretary of the United States Department of the Interior, et al., dated January 24, 1990 (Settlement Agreement). An agreement which requires OSM to undertake certain actions under the Act, including enhancement and use of the AVS to implement the provisions of section 510(c) of the Act; requires OSM to seek SRA participation in the use of the AVS; and includes certain other tracking and reporting requirements.

#### 4. Policy/Procedures.

##### a. Background.

Section 510(b) of the Act states that no permit or revision application shall be approved unless the regulatory authority finds on the basis of the information set forth in the application or from other available sources that the application is complete and accurate. Section 510(c) of the Act states that the regulatory authority shall not issue a permit if any surface coal mining operation owned or controlled by the applicant is currently in violation of the Act or certain other air or water quality laws. The AVS was developed to assist OSM and SRA's in complying with these permitting requirements of the Act and approved State programs. The system also enables OSM to meet its AVS-related obligations of the Settlement Agreement.

Under the Settlement Agreement, OSM is required to:

(1) enhance, update, and maintain a computerized system to be used by OSM and primacy States to withhold permits for mining operations from persons and entities who are responsible for or are linked through ownership and control to outstanding violations, penalties or Abandoned Mine Lands (AML) fees;

(2) develop AVS MOU's with SRA's which establish OSM and State responsibilities relating to the implementation of the AVS (see Appendix 1, the model AVS MOU for further details of OSM and State responsibilities);

(3) monitor a State's implementation of its AVS MOU and, in doing so, be cognizant of specific requirements and phase-in of certain State responsibilities that are based on additional resources and funding as enumerated in the State's AVS MOU;

(4) coordinate investigations and remedial actions with SRA's when OSM identifies potential improvidently issued permits (see Directive INE-34, "Improvidently Issued Permits," for further guidance on responding to such permits); and

(5) if an SRA fails to comply with the requirements of subparagraphs 3.1.1 through 3.1.3 and 3.1.6 of the Settlement Agreement, or if the SRA fails in a systemic manner to comply with the requirements of subparagraphs 3.1.4 and 3.1.5 of the Settlement Agreement, to the extent such requirements are binding on the State pursuant to its approved program or its AVS MOU, initiate actions to reduce or terminate its Title V grant or its AML grant, and/or substitute Federal enforcement or withdraw approval of the State program.

b. Policy. As part of OSM's State program oversight responsibilities, it is OSM's policy to evaluate the States' established procedures and use of the AVS in their permit review and approval processes, and to assure that the States are complying with the provisions of their AVS MOU's. It is acknowledged that oversight will not extend to those data entry functions as stipulated in Section 4.c.(3)(d) which are under OSM's jurisdiction.

c. Procedures/Responsibilities.

(1) Assistant Director for Field Operations is responsible for:

(a) providing guidance to the Field Offices on the procedures for monitoring the SRA's compliance with their AVS MOU's;

(b) assuring that the Field Offices are conducting oversight activities in accordance with the requirements of this directive; and

(c) recommending to the Director, through the Deputy Director for Operations and Technical Services, remedial action under 30 CFR 735.21 for the reduction or termination of Title V grants, 30 CFR 886.18 for the reduction or termination of AML grants, or 30 CFR 733.12(b), substituting Federal enforcement or withdrawing approval of the State program when it is determined that an SRA is not implementing its AVS MOU as referenced in section 4.a.(5) of this directive.

(2) Field Office Directors are responsible for:

(a) Oversight Activities. The Field Office Director shall conduct oversight activities and field investigations necessary to determine whether and to what extent the States are complying with the provisions of their AVS MOU. Field Office Directors should consult the individual State's AVS MOU for the effective dates of the various substantive provisions prior to conducting oversight activities. Oversight may include, for example:

1. For adequate internal controls: routine oversight reviews to ensure that a State has established adequate internal controls that ensure that all application data is entered accurately, completely and timely into the AVS, as enumerated in the AVS MOU, State Responsibilities, Sections IV. B. through F. The test for internal controls is the ability to verify if the controls being used are effective, and whether they can identify material weaknesses in a program or in current operating procedures. If determined adequate, sampling State application data as part of a routine workplan review cycle (i.e., every two to three years unless the Field Office Director determines or is advised by the AVS Office that a State is experiencing problems with data entry and documentation in which case additional oversight measures or increased frequency should be conducted); and

2. For inadequate internal controls: where State internal controls do not exist or are not functioning adequately, sampling State application data at a frequency necessary to ensure the program functions adequately (i.e., an annual review unless a lesser review frequency is deemed appropriate by the Field Office Director when the lack of internal controls has not resulted in inadequate program implementation).

(b) Responding to Irregularities. Field Office Directors shall respond to a variety of problems during oversight activities when the Field Office observes irregularities or trends regarding a State's failure to comply with its AVS MOU, or when the AVS Office alerts the Field Office of irregularities. This shall include:

1. in consultation with the appropriate Assistant Director, Eastern or Western Support Center, alerting the Assistant Director for Field Operations and the AVS Office of State program amendments which may affect the State's ability to satisfy the requirements of its AVS MOU, or any additional matters which should be incorporated in the AVS MOU; and

2. ensuring that SRA's, when conditionally issuing a permit, are including the proper condition as a part of the approved permit.

(c) Permit Problems. Specifically, whenever the Field Office determines that an SRA approved a permitting action without complying with the applicable provisions of its AVS MOU, the Field Office Director shall investigate the circumstances to determine whether the permit was improvidently issued and, if so:

1. Resolve Permit Problems. The Field Office Director shall notify the SRA within 30 days after verification of the potentially improvidently issued permit as required by 30 CFR 843.21(a), and Directive INE-34, "Improvidently Issued Permits." In implementing those procedures, should the Field Office Director find it necessary to issue a Ten-Day Notice, that action shall be taken in accordance with Directive INE-35, "Ten-Day Notices."

2. Resolve State Program Implementation. Whenever case-specific permitting problems are observed (e.g., improvidently issued permits or other problems), the Field Office Director shall communicate informally with the State in an effort to ensure that the cause of the permitting problem does not recur. Where appropriate, the Field Office Director shall recommend establishment of or improvements in State internal controls. Where a State is not complying with its AVS MOU, the Field Office Director must refer to the specific provisions of Section 4.c.(2)(d), SRA non-compliance with its AVS MOU, below for the appropriate sanctions to be taken to ensure State compliance. For lesser or other non-compliance problems, the Field Office Director may refer to Directive REG-23, "Development and Implementation of Action Plans," and when required, issue letters advising the State of the need to amend its program as provided in 30 CFR Part 732 ("732 notifications").

(d) SRA non-compliance with its AVS MOU. Whenever the Field Office Director determines that an SRA has not complied with its AVS MOU, the Field Office Director shall take action in the following manner (references are to the model AVS MOU found as Appendix 1):

1. Pre-permitting Decision Requirements. For any knowing failure to comply with section IV.C.(1)-(6) of the AVS MOU concerning pre-permitting decision requirements, Field Office Directors shall recommend action under 30 CFR 735.21 for the reduction or termination of the SRA's Title V grant or under 30 CFR 886.18, AML grant reduction or termination (as allowed by law), and/or initiate action under 30 CFR 733.12(b) to substitute Federal enforcement or withdraw approval of the State program;

2. Sanctions for Knowing Omissions or Inaccuracies. For any knowing failure to comply with section IV.F. of the AVS MOU which requires SRA's to consider imposing sanctions against applicants who intentionally omit or provide inaccurate information on their applications, Field Office Directors shall recommend action under 30 CFR 735.21 for the reduction of the SRA's Title V grant or under 30 CFR 886.18, AML grant reduction or termination (as allowed by law);

3. Post-permitting Decision Requirements. Sections IV.D. and E. of the AVS MOU enumerate SRA responsibilities to verify that the ownership and control information contained on the application remains current within two months after site disturbance, and annually thereafter, as long as coal extraction on the site has not been completed.

a. For failure to comply in a systemic manner with sections IV.D. or E, Field Office Directors shall recommend action under 30 CFR 735.21 for the reduction of the SRA's Title V grant or under 30 CFR 886.18, AML grant reduction or termination (as allowed by law); and

b. For failure to comply in a non-systemic manner with sections IV.D. or E., Field Office Directors shall refer to Directive REG-23, "Development and Implementation of Action Plans," and when required, issue letters advising the State of the need to amend its program as provided in 30 CFR Part 732 ("732 notifications").

4. Reduction or Termination of Grants. Where Field Office Directors recommend action under 30 CFR 735.21 for the reduction of the SRA's Title V grant or under 30 CFR 886.18, AML grant reduction or termination, refer to Directive GMT 10-2, "Federal Assistance Manual," for procedural guidelines.

(3) The AVS Office is responsible for:

(a) providing the maintenance, training, and technical assistance for the AVS;

(b) providing on-line capabilities for Field Offices to obtain oversight reports needed to perform oversight of the SRA's; and

(c) compiling data from Field Offices on improvidently issued permits and State permitting actions for tracking system reports in accordance with the Settlement Agreement.

(d) reviewing challenges to ownership and control links found on the AVS, for multi-State corporations where an

organization has, has pending, or had a permit or link in more than one State.

5. Reporting Requirements.

a. Field Office Directors are responsible for preparing and reporting oversight activities to the Assistant Director for Field Operations as required in Directive REG-8, "Oversight of State Regulatory and State and Tribal Abandoned Mine Land Reclamation Programs."

b. The AVS Office shall collect data on permitting actions and improvidently issued permits reviewed to fulfill requirements of the Settlement Agreement for inclusion in the tracking system reports. To the extent the AVS Office needs field data for the tracking system reports, it shall advise the Assistant Director for Field Operations of the needed data and coordinate data collection through that office.

6. Effect on Other Documents. Supersedes Directive INE-32, dated October 1, 1987, and INE-32-1 dated June 26, 1989, "Oversight Procedures for States' Use of the Applicant Violator System."

7. References.

a. 30 CFR 773.5 and 773.15(b)(1).

b. Sections 510(a), 510(b), 510(c), 518(a), 518(f) and 518(h) of the Act.

c. Memorandum of Understanding Between OSM and the Primacy States on use of the AVS (see Appendix 1 for model).

d. Settlement Agreement Between Save Our Cumberland Mountains, Inc., et al., and Manuel Lujan, Jr., Secretary of the United States Department of the Interior, et al., dated January 24, 1990.

e. Directive GMT 10-2, "Federal Assistance Manual," dated February 26, 1990.

f. Directive INE-34, "Improvidently Issued Permits," dated February 22, 1991.

g. Directive INE-35, "Ten-Day Notices," dated October 19, 1990.

h. Directive REG-8, "Oversight of State Regulatory and State and Tribal Abandoned Mine Land Reclamation Programs," dated August 24, 1990.

i. Directive REG-23, "Development and Implementation of Action Plans," dated January 2, 1988.

j. The memorandum, "Operators and Contractors," dated January 18, 1991, from the Assistant Deputy Director, Operations and Technical Services to the Field Office Directors.

8. Effective Date. Upon Issuance.

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

10. Keywords. Applicant/Violator System (AVS), AVS Office, AVS Memorandum of Understanding (AVS MOU), Oversight, Responsibility, Settlement Agreement, Save Our Cumberland Mountains, Inc.

11. Appendix.

Appendix 1: Model of "Memorandum of Understanding Between the Office of Surface Mining Reclamation and Enforcement and the State of \_\_\_\_\_."



MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE OFFICE OF SURFACE MINING RECLAMATION  
AND ENFORCEMENT AND  
THE STATE OF -----

Appendix 1

["-----" to be replaced with State name.]

I. Introduction and Purpose

The purpose of this Memorandum of Understanding (MOU) is to set forth how the State of ----- and the Office of Surface Mining Reclamation and Enforcement (OSM) will implement 30 U.S.C. 1260(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and [insert -----'s analogue to 30 U.S.C. 1260(c)] of -----'s approved regulatory program which require that permit approval be withheld to an applicant if any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant has any outstanding violation of SMCRA or certain other environmental protection statutes and rules. This MOU is further intended to implement the terms of the Settlement Agreement Between Save Our Cumberland Mountains, Inc., et al. and Manuel Lujan, Jr., Secretary, United States Department of the Interior, et al., dated January 24, 1990 (hereafter referred to as "Settlement Agreement").

In addition, since 1985, in each Appropriation Act, the Congress has conditioned -----'s receipt of appropriated funds for reclamation pursuant to Title IV of SMCRA on -----'s participation in OSM's nationwide computerized data system for the review of permit applications under 30 U.S.C. 1260(c).

This MOU supersedes any prior MOU or other written agreement between ----- and OSM relating to -----'s use of OSM's nationwide applicant/violator computerized data system, hereafter referred to as "AVS."

II. Definitions

- A. "AVS" means the nationwide applicant/violator computerized data system developed by OSM which contains or will contain ownership and control and violator information designed to assist ----- in making determinations under [insert the State regulation or statute which is analogous to 30 U.S.C. 1260(c)].

- B. "Complete" information means all information required by the applicable regulations and application forms.
- C. "Modification" means an update, correction, or other change to an application for a permitting action.
- D. "Operator" means any person or entity meeting the definition in 30 U.S.C. 1291(13). It includes any person or entity that removes coal directly through its own employees, and it includes any person or entity (including the mineral owner in appropriate cases) that removes coal indirectly through a contractor or agent. E.g., United States v. Rapoca Energy Co., 613 F. Supp. 1161 (W.D. Va. 1985).
- E. "Permitting action" means a permit and any transfer, assignment, or sale of permit rights, operator reassignment, or other action which requires a compliance review under 30 U.S.C. 1260(c), applicable regulations, and/or the approved State program. Where the State program provides for post-permit-issuance compliance checks for phased or incremental bonding, such actions shall not be considered "permitting actions" requiring compliance review under 30 U.S.C. 1260(c).

### III. OSM's Responsibilities under this MOU

- A. OSM shall develop, maintain, and provide for the use of ----- the AVS, which contains or will contain ownership and control data and violator information to assist ----- in meeting the mandated requirements under [insert the State regulation or statute which is analogous to 30 U.S.C. 1260(c)]. All data entered into AVS by OSM shall comply with standards and coding conventions as provided in the AVS User's Manual.
- B. The AVS shall contain as accurate and complete data as can reasonably be obtained on violators, regarding outstanding Federal failure-to-abate cessation orders, delinquent abandoned mine land (AML) reclamation fees, and outstanding Federal penalties.
- C. The AVS shall be capable of identifying, at a minimum, all of the following ownership and control relationships which meet the requirements of 30 C.F.R. 773.5, each of which will constitute a "link":

- (1) any relationship between or among (i) an applicant or permittee, (ii) an immediate owner or controller of the applicant or permittee, (iii) an operator of the site covered by the application or permit, (iv) an immediate owner or controller of such operator, and (v) a person or entity in an ownership or control relationship with any person in (1)(i) through (1)(iv), as determined by OSM as a result of the ongoing revisions to AVS.
  - (2) any relationship between or among (i) a violator, (ii) an immediate owner or controller of the violator, (iii) an operator of the site covered by the violation, (iv) an immediate owner or controller of such operator, and (v) a person or entity in an ownership or control relationship with any person in (2)(i) through (2)(iv), as determined by OSM as a result of ongoing revisions to AVS;
  - (3) an identity between any person or entity in (1) and any person or entity in (2); and
  - (4) any ownership and control relationships identified by the following databases: the R-31 database maintained by the Mine Safety and Health Administration (MSHA); the coal information database maintained by the Energy Information Agency (EIA); the mine operator database maintained by the Kentucky Department of Mines and Minerals; the Surface Mining Information Systems (SMIS) maintained by Kentucky, Virginia, and West Virginia; and the AML system maintained by OSM.
- D. OSM shall respond within a reasonable time to any problems identified by ----- in its use of AVS and processing of surface coal mining applications under [insert the State regulation or statute which is analogous to 30 U.S.C. 1260(c)].
- E. OSM shall provide ----- with training, technical assistance, and documentation to facilitate -----'s use of AVS. Documentation shall include AVS User's Manual(s) and data entry standards as developed by OSM to minimize data entry errors and omissions.
- F. OSM shall provide all software and related information files to assure that ----- is capable of implementing the provisions of this MOU.

IV. State's Responsibilities under this MOU

- A. ----- agrees to participate in a reasonable amount of AVS training and system testing, as requested by either OSM or the State.
- B. Within 30 days of -----'s determination that new or updated information exists, ----- agrees to update data on applicants, permittees, operators, and their owners or controllers. All data entered into AVS by ----- shall comply with standards and coding conventions as provided in the AVS User's Manual.
- C. In making a decision with respect to a permitting action, ----- agrees to undertake the following procedures:
- (1) Prior to the AVS query required by Section IV.C.(5) of this MOU, ----- shall review the application, any automated data sources reasonably available to ----- (including its own computer systems, if any, and any files available through AVS), and any manual data sources reasonably available to ----- (including its own inspection and enforcement files and corporation commission records, if relevant) to determine whether the information contained in the application concerning ownership and control is complete.
  - (2) In determining whether an application is complete, ----- shall place special emphasis on the identification of operators (as defined in Section II.D. above) and the owners and controllers of operators. If a review of the application discloses that none of the persons identified in the application has ever held a Federal or State mining permit, ----- shall determine whether a person or entity other than the applicant or operator identified in the application will extract the coal under the permit, if issued, and/or whether the listed controllers will in fact control the operation.
  - (3) If ----- determines that an operator different from the applicant or the operator identified in the application will extract the coal, ----- shall require the applicant to include the person or entity who will in fact be extracting the coal on the application as the operator.

- (4) Similarly, if ----- identifies any other potential omissions or inaccuracies in the application information as a result of the review conducted above, it shall contact the applicant and require that the matter be resolved through submission of a satisfactory explanation or submission of a modification to the ownership and control information in the application prior to making a final determination with regard to the permitting action.
  - (5) Using the information obtained as a result of the actions taken under IV.C.(1) through IV.C.(4) above, ----- shall query AVS to determine whether the applicant is linked to a violator through ownership or control. If so, after appropriate verification as determined by the State, ----- shall notify the applicant and shall refer the applicant to the agency with jurisdiction over any violation linked to the applicant.
  - (6) ----- shall not finally approve the application, unless and until (a) all ownership and control links involving the applicant and any violator, as shown by AVS, have been shown to be erroneous or have been rebutted, or (b) the applicant has established under [insert the State program analogue to 30 CFR 773.15(b)(1)] that the violation has been abated, is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, or is the subject of a good faith appeal.
  - (7) Within 30 days following -----'s decision on the application (including unconditional issuance, conditional issuance, or denial of the permit) or within 30 days following the applicant's withdrawal of the application, ----- shall enter all relevant information related to such decision or withdrawal into AVS.
- D. Within two months after the initial disturbance of any site for which a permitting action was approved subsequent to the execution of this agreement, ----- shall determine whether the ownership and control information contained in the permit application was complete and accurate. Annually thereafter, as long as coal extraction on the permitted site has not been completed, ----- shall determine whether the ownership and control information contained in the permit remains complete and accurate. In making such determinations, ----- shall, at a minimum, take the following steps:

- (1) on-site observations (e.g., of the mine identification sign and equipment markings) and direct inquiry (of persons on the site) to verify the identity of permittee, the operator, and the MSHA number for the site; and
  - (2) a review of MSHA, AML, and EIA information as provided by OSM through AVS, to verify the permittee, operator, and MSHA number listed in such data sources.
- E. If ----- determines as a result of the actions taken pursuant to Section IV.D. of this MOU that the application information may have been incomplete or inaccurate, or may have changed, it shall promptly contact the permittee and require that the permittee submit within 30 days a satisfactory explanation, modification to the permit, or application for a transfer, assignment, or sale of permit rights.
- (1) If ----- determines that an operator who was not identified in the permit and for whom a transfer, assignment, or sale of permit rights has not been approved is conducting surface coal mining operations on the site, ----- shall take immediate enforcement action and assess a civil penalty under the approved program.
  - (2) Mining by such operator may be allowed to resume on the site, pending a final decision on an application for a transfer, assignment, or sale of permit rights, when all of the following conditions have been met:
    - (a) The permittee has submitted to ----- a complete application for transfer, assignment, or sale of permit rights;
    - (b) ----- has determined that adequate bond coverage and liability insurance exist with respect to surface coal mining operations by such operation; and
    - (c) ----- has determined, in accordance with the procedures set forth in Section IV.C. of this MOU, that such operator is eligible to succeed to mining rights under the permit.

(3) If the final decision on the application for transfer, assignment, or sale of permit rights is a denial of the application, ----- shall require the immediate cessation of mining by anyone on the site other than the permittee or an operator approved in either the permit or in a separate application for transfer, assignment, or sale of permit rights.

F. If ----- determines that any information provided by the applicant contained an omission or inaccuracy which was intentional, it shall promptly consider actions available under its approved program to impose sanctions. Such actions may include denial, suspension, or rescission of the permit, assessment of a civil penalty and/or individual civil penalty, and/or criminal prosecution under [insert State program's analogue to 30 U.S.C. 1268(g)] when the standards applicable to such actions have been met.

#### V. Budget Considerations

Subject to availability of appropriated funds, OSM will provide software, training, documentation, and on-line computer time to the AVS computer without cost to ----- . OSM shall develop, in consultation with -----, a resource plan to ensure that the requirements of this MOU can be met. All costs incurred by ----- pursuant to this MOU will be provided by OSM to the extent specified in the DOI and Related Agencies Appropriations Act, 1991, and OSM Cooperative Agreement Number \_\_\_\_ . During subsequent years, OSM expenditures will be consistent with applicable appropriations law. If in future years, the required level of resources is not available, or if such resources are subsequently reduced, or if the obligations require greater resources than currently understood, ----- and OSM shall undertake promptly to meet and attempt in good faith to reach agreement on modifications to the obligations set forth in this MOU. If the parties cannot agree on the required modifications, either party may seek termination of the MOU pursuant to Section VI.

#### VI. Termination Requirements

This MOU shall remain in effect unless terminated by either party. If either party wishes to terminate the MOU, such party shall provide to the other party a written notice of its intent to terminate at least 60 days in advance of the intended termination date. Such notice shall state the reasons for the party's intended termination. The parties shall thereafter meet and negotiate, at least 30 days prior

to the intended termination date, in an attempt to resolve the matters which form the basis for the intended termination. In the event that the parties cannot reach agreement to resolve such matters, termination shall occur on the intended termination date, unless otherwise agreed to by the parties.

VII. Modifications of the MOU

The parties may amend, modify, or supplement this Agreement by a written agreement signed by the parties. This agreement shall not be changed without the written consent of the parties.

VIII. Provisions of State Law Relevant to this MOU

With respect to any provisions of State law mentioned in or otherwise applicable to this MOU, the parties agree and understand that such provisions may be subject to amendment by the State from time-to-time as part of the State's regulatory program. Such amendments shall become effective upon approval by OSM in accordance with the provisions of 30 CFR Part 732. When such amendments become effective, they shall become applicable to the provisions of this MOU.

If, at any time, [state] has reason to believe that it lacks the legal authority to fully comply with this MOU, [state] shall promptly notify OSM of the provisions it believes to be unenforceable and the legal basis for the concern. OSM and [state] shall undertake promptly to meet and attempt in good faith to reach agreement on whether, and if so the extent to which, any requirement of this MOU cannot be met. If it is determined by the parties that [state] lacks legal authority to implement a requirement of this MOU, the state shall seek, in good faith, to amend its program, pursuant to 30 CFR Part 732, to give [state] the legal authority necessary to fully implement this MOU.

IX. Effect of Judicial Actions upon this MOU

Any provision of this MOU shall be deemed deleted or modified to the extent it is invalidated or rendered impossible or infeasible to perform as the result of judicial action. To the extent any provision of this MOU is modified as a result of such judicial action, OSM and ----- shall undertake promptly to meet and attempt in good faith to reach agreement on whether, and if so the extent to which, other obligations under this MOU need to be modified. If any provision of this MOU shall be invalid or unenforceable to any extent, the remainder of this MOU shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.



X. Effective Date

The provisions of this MOU shall become effective immediately upon execution by OSM and -----, except that the following provisions shall become effective 120 days after the appropriate resources are made available to -----  
--:

[List those provisions within Part IV that will require additional resources for the State to implement. The list will vary from State to State, based on the anticipated volume of work and the level of resources presently available. At a minimum, the following provisions in Part IV are expected to become effective immediately upon signing of the MOU: paragraphs A, B, C(1), except with respect to the review of manual data sources, and C(3)-(7).]

SO AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT

by \_\_\_\_\_  
Title:

[insert name of State]

by \_\_\_\_\_  
Title: