

What is Oversight?

The Office of Surface Mining Reclamation and Enforcement ([OSM](#)) is the primary regulator of coal mining under the Surface Mining Control and Reclamation Act of 1977 ([SMCRA](#)) until a state or Indian tribe demonstrates that it has developed a regulatory program that meets all of the requirements in the SMCRA and implementing regulations issued by OSM ([30 CFR Chapter VII](#)). When a state or Indian tribe submits and receives approval of its proposed regulatory program from OSM, it becomes the primary regulator within that state or on reservation lands, respectively, and assumes responsibility over permitting, inspection, and enforcement activities. OSM then provides oversight of the state's or tribe's implementation of the regulatory program.

The fundamental purpose of oversight is to ensure that states and tribes are effectively implementing, administering, maintaining, and enforcing approved state and tribal programs.

OSM's [Directive REG-8, Oversight of State Regulatory Programs](#), defines "oversight," in the context of procedures for conducting oversight, as the "process of evaluating and assisting states [and tribes] in the administration, implementation and maintenance of approved regulatory programs." The Directive states that—

OSM's oversight role will not involve any duplication of the State's program implementation responsibilities. Oversight will not be process-driven. Instead, OSM oversight will focus on the on-the-ground/end-result success of the State program in achieving the purposes of the Act. Also, it will focus on identifying the need for and providing financial, technical, and other program assistance to States to strengthen their programs.

In other words, oversight includes inspections and other evaluations of how well state programs are ensuring environmental protection, reclamation success, and prevention of off-site impacts. It also includes providing training to state employees to help them do their jobs better and technical assistance, such as information technology and software, to improve both state capability and efficiency in processing permit applications and evaluating reclamation.

The current oversight strategy focuses on whether the public protection requirements and environmental protection standards of SMCRA are being met. The primary focus is on end results and the on-the-ground success of states and tribes in meeting SMCRA's environmental protection goals. OSM conducts oversight under a results-oriented strategy that emphasizes cooperative problem solving with the states and tribes, evaluations tailored to state-specific or reservation-specific conditions, and the development of performance agreements. This strategy has promoted a more positive attitude and cooperation with states to improve state program implementation. Under Directive REG-8, the performance agreement is a framework by which OSM and the state or tribe agree on a plan for oversight activities. Joint efforts to prepare workable performance agreements also maintain and improve the relationship between OSM and the state or tribe and foster shared responsibilities and a more open discussion of difficult issues.

Additionally, joint inspections with the state or tribe provide the opportunity for the Field Offices to work cooperatively with the states or tribes and industry to resolve problems.

What is the statutory and regulatory basis for oversight?

Historically, OSM has viewed oversight as having two principal elements. The first element is evaluation and implementation of state and tribal regulatory programs:

SMCRA

- Section 201(c)(1)
“The Secretary, acting through the Office, shall – *** make those investigations and inspections necessary to insure compliance with this Act***.”
- Section 504(b)
“In the event that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 521, of that part of the State program not being enforced by such State.”
- Section 517(a)
“The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs***.”
- Section 517(h)(1)
“Any person who is or may be adversely affected by a surface mining operation may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which he has reason to believe exists at the surface mining site.”
- Section 521(a)(1)
“Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation ***.”
- Section 521(b)
“Whenever on the basis of information available to him, the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively, he shall after public notice and notice to the State, hold a hearing thereon in the State within thirty

days of such notice. If as a result of said hearing the Secretary finds that there are violations and such violations result from a failure of the State to enforce all or any part of the State program effectively, and if he further finds that the State has not adequately demonstrated its capability and intent to enforce such State program, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this Act, the Secretary shall enforce, in the manner provided by this Act, any permit condition required under this Act, shall issue new or revised permits in accordance with requirements of this Act, and may issue such notices and orders as are necessary for compliance therewith: Provided, That in the case of a State permittee who has met his obligations under such permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Secretary shall give the permittee a reasonable time to conform ongoing surface mining and reclamation to the requirements of this Act before suspending or revoking the State permit.”

Regulations at 30 CFR Chapter VII

- 30 CFR 701.4(b)(1)
“While a State regulatory program is in effect, the Office’s responsibility includes, but is not limited to *** evaluating the administration of the State program through such means as periodic inspections of coal exploration and surface coal mining and reclamation operations in the State ***.”
- 30 CFR 733.12(a)(1)
“The Director shall evaluate the administration of each state program at least annually.”
- 30 CFR 842.11(a)(1)
“Authorized representatives of the Secretary shall conduct inspections of surface coal mining and reclamation operations as necessary *** [t]o monitor and evaluate the administration of approved State programs. Such monitoring and evaluation and inspections shall be conducted jointly with the State regulatory authority where practical and where the State so requests.”
- 30 CFR 842.11(b)(1)
“An authorized representative of the Secretary shall immediately conduct a Federal inspection *** [w]hen the authorized representative has reason to believe on the basis of information available to him or her *** that there exists a violation of the Act, *** and *** [t]he authorized representative has notified the state regulatory authority of the possible violation and more than ten days have passed since notification and the State regulatory authority has failed to take appropriate action***.”
- 30 CFR 842.12(a)
“A person may request a Federal inspection under §842.11 (b) by furnishing to an authorized representative of the Secretary a signed written statement *** giving the

authorized representative reason to believe that a violation, condition or practice referred to in §842.11(b)(1)(i) exists and that the State regulatory authority, if any, has been notified in writing, of the existence of the violation, condition or practice.”

Policy Directive REG-8

- Appendix 1, Section II.(A) General Approach

“Inspections and/or site visits are an integral part of OSM’s oversight activities. The evaluation plan/performance agreement should clearly describe what is expected to be accomplished through OSM inspections and/or site visits, so that both the State and OSM staff understand the purposes of the inspections/site visits. Inspections/site visits should be planned and designed to meet the overall objectives of the Field Office’s oversight plan. Identifying the objectives of OSM oversight inspections and an inspection plan in the evaluation plan/performance agreement does not alter any of OSM’s enforcement responsibilities under SMCRA or the Federal regulations.

“While OSM is committed to working with States and other interested parties to seek consensus on oversight techniques and evaluations, the bureau will maintain its independence and objectivity in implementing its oversight duties under SMCRA. OSM’s oversight role will not involve any duplication of the State’s program implementation responsibilities. Oversight will not be process-driven. Instead, OSM oversight will focus on the on-the-ground/end-result success of the State program in achieving the purposes of the Act. Also, it will focus on identifying the need for and providing financial, technical, and other program assistance to States to strengthen their programs.”

The second element consists of technical and other assistance to states:

SMCRA

- Section 102(g)

“It is the purpose of this Act to *** assist the States in developing and implementing a program to achieve the purposes of this Act.”

Section 705(b)

“The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

“(1) technical assistance and training, including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

“(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs.”

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