

## CHAPTER 5-120

### FUNDING FOR STATE REGULATION ON FEDERAL LANDS

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#### **5-120-00 What does this chapter do?**

This chapter explains policies and procedures for us, the Office of Surface Mining Reclamation and Enforcement (OSM), to fund States to regulate surface coal mining on Federal lands within their borders. These policies and procedures apply to you if your approved State coal regulatory program has an approved Federal lands cooperative agreement.

#### **5-120-10 Can States regulate mining on Federal lands within their borders?**

Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) allows any State with an approved State regulatory program to enter into a cooperative agreement with the Secretary of the Interior to regulate surface coal mining and reclamation operations on Federal lands within the State. To approve a Federal lands cooperative agreement, the Secretary must determine in writing that the State has the necessary personnel and funding to fully implement the agreement.

#### **5-120-20 How do we provide Federal lands funding?**

We award funds to you for a Federal lands cooperative agreement as a component of your regulatory program Administrative & Enforcement (A&E) funding. This combines all annual funding in a single regulatory grant for your State.

#### **5-120-30 What are the limits on how much Federal lands funding you can receive?**

- A. Section 705(c) of SMCRA limits the amount of Federal funds that we may award to you for Federal lands funding to the amount we estimate it would cost us if we did the regulatory work.
- B. Our regulations at 30 CFR 735.16(c) specify that you may not receive more money than your actual costs for your regulatory operations on Federal lands.

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### 5-120-40 What are the three options you may use to calculate Federal lands costs?

We have established three options for you to calculate your Federal lands funding. You may choose which of these three options you use as the basis for the amount of Federal lands funding you request in your grant application.

#### A. Mine Acreage Option.

1. Under this option, you use the percentage of all permitted Federal lands acres to all permitted acres in the State (except Indian lands) to determine the split between Federal and non-Federal program costs.
2. Determine the number of permitted acres of Federal land and the total number of permitted acres in your State. List each mine which is under permit, or for which a permit is anticipated, during the grant period, and the number of Federal acres and total acres for each mine. Calculate the total number of Federal lands acres and total acres in the State. You must include this list in your grant application.
3. Divide the Federal lands acres by total acres to calculate the percentage of Federal lands acres. You can use the percentage of Federal lands acres as the percentage of your total program costs which are for Federal lands operations. Apply this percentage to your estimate of the total cost of your program for this period to determine your costs for Federal lands operations. The remaining costs are your non-Federal lands costs. Calculate the final budget funding split by applying the 50% match requirement to your non-Federal lands costs.
4. For example, if 30% of a State's total permitted acreage is on Federal lands, then 30% of that program's total costs would be Federal lands costs which are 100% Federally funded. The remaining 70% of the program costs would be for non-Federal lands, and would be split evenly between Federal and non-Federal funds. If the total program costs for this State were \$1,000,000, the State would apply for Federal funding of \$650,000 (\$300,000 for Federal lands costs and \$350,000 for 50% of the non-Federal lands costs) and show \$350,000 in State funds for the other 50% of the non-Federal lands costs.

#### B. Area-Weighted Acreage Option.

1. Under this option, the Federal lands acreage is adjusted up to reflect the additional requirements and higher costs States experience in working on Federal lands.
2. For each permit area, calculate the percentage of Federal lands within the total of all lands (non-Indian) in the permit area. Then determine the appropriate funding level for each permit area using the following table.

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If the Federal lands percent is:	Then the Federal lands funding percent is:	And the Federal funding percent (with 50% match) is:
0%	0%	50%
>0 but $\leq$ 25%	25%	62.5%
>25 but $\leq$ 50%	50%	75%
>50 but $\leq$ 75%	75%	87.5%
>75%	100%	100%

2. Multiply the Federal funding percent for each permit area by the total acreage for the permit to determine the Federally-funded acres in each permit area. List each mine which is permitted or expected to be permitted during the grant performance period showing the permitted Federal lands and total acres, the Federally-funded acres calculation for each mine, and the total Federally-funded acres. Include the list in your grant application.
3. Divide the total Federally-funded acres in the State by the total permitted acres to get the percentage of Federally-funded acres. Then apply the percentage of Federally-funded acres to the estimated total State regulatory program costs to determine the Federal lands funding. The remaining program costs, representing operations on non-Federal lands, must be funded with 50% Federal and 50% State share funds.

### C. Workload Option.

1. Under this option, you calculate the Federal cost sharing percentage based on your detailed workload projections for the grant period. To estimate your costs, multiply your average costs for permitting and inspection and enforcement activities by the workload you anticipate during this grant period. You may also add any unique workload costs not included in the permitting or inspection and enforcement to the cost estimate.
2. You must use your own system to determine what percent of the total projected workload for the grant period involves regulation on Federal lands. You must provide item-specific information in the analysis of your workload, and include data from your records and other supportable information to justify your calculations for the Federal lands cost, and the Federal/State funding split in your grant application.

### 5-120-50 Can you choose not to request Federal lands funding?

Yes, States with approved Federal lands cooperative agreements may choose not to request additional funding above the fifty percent normal cost-sharing ratio for your work on non-Federal lands. If you do

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not request Federal lands funding, you do not have to separate costs for work on Federal lands or to provide any of the additional information or calculations required above.

### 5-120-60 What information on Federal lands funding must you include in your grant application?

- A. You must prepare each grant application in accordance with any requirements of the approved cooperative agreement and in accordance with grant application procedures outlined in Chapter [5-200](#). In addition, as part of your grant application for Federal lands funding, you must provide the following information.
1. A detailed breakdown of the estimated total cost of implementing the regulatory program into Federal and non-Federal lands components. You must explain and document the option and calculations used.
  2. If you use the acreage or area-weighted acreage options, you must provide a list of each mine and the actual permitted acreage of Federal and total lands.
  3. If you use the workload option, you must include a detailed estimate of the Federal lands workload, discussed in terms of the specific permitting, inspection and enforcement, and administrative requirements of your State regulatory program and the cooperative agreement.
- B. You should calculate the Federal lands funding using your preferred option. Then add it to the Federal share of the non-Federal lands funding (normally 50% of the cost) to determine your total regulatory grant request. When we review your application, we will determine whether the calculation is adequately documented and the proposed budget meets the funding limits in this section.

### 5-120-70 How will we review the Federal lands funding in your application?

Our awarding office must perform the following functions.

- A. Prepare State-specific data estimating what it would cost us to regulate these Federal lands if there were no cooperative agreement. Include permitting, inspection and enforcement, and administrative activities which we would conduct under a Federal program.
- B. Review the grant application, cost estimates, and workload information you submitted. Compare the State costs for Federal lands regulation to the Federal cost estimate.
- C. If the cost comparison shows State costs exceeding the estimated Federal costs, we will provide you with our cost estimates and work with you to resolve concerns and differences so that we can support the cooperative agreement with Federal lands funding which meets the requirements in this chapter.

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### **5-120-80 What special requirements apply to Federal lands expenditures?**

- A. You must account for Federal lands costs consistently. You must use the option you chose in your grant application, and the resulting match percentage that we approved in your grant award, throughout the entire grant period to charge costs and report regulatory expenditures.
  
- B. We will not pay expenses for litigation relating to Federal lands issues. This is a responsibility of the Department's Office of the Solicitor.