



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

Subject Number:
REG-22

Transmittal Number:
880

Date: MAY 04 1999

Subject: Developing and Processing State/Federal Cooperative Agreements for State Regulation on Federal Lands

Approval:

Kathy Ferguson

Title:

Director

1. PURPOSE. This directive establishes procedures and guidelines for the development and processing of State-Federal cooperative agreements. These agreements provide for State regulation of surface coal mining and reclamation operations and certain coal exploration operations on Federal lands in States with approved regulatory programs. This directive also addresses amendments to these cooperative agreements.

2. SUMMARY OF CHANGES. This directive reflects the following changes to Directive REG-22, approved July 31, 1989.

- a. Various organizational titles are changed to reflect the existing organization.
- b. Responsibility for consulting with other agencies, preparing all necessary documents and newspaper notifications, and preparing the Federal Register notices are delegated to the Regional Director (RD).
- c. Some responsibilities originally assigned to the Field Office Director (FOD) are assigned to the RD in 4.c.(1) (e), (f); 4.c.(2) (b), (c), (d), and (e).
- d. Some responsibilities originally assigned to the RD are assigned to the Assistant Director, Program Support (AD/PS), including those found at 4.c.(1) (g); 4.c.(2), (d), and (e).

3. DEFINITIONS.

State-Federal Cooperative Agreement. The formal document executed pursuant to section 523 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and 30 CFR Part 745, and signed by the Secretary of the Interior or his/her designee and the Governor of a State to provide for State regulation of surface coal mining and reclamation operations on Federal lands, and coal exploration on Federal lands not subject to 43 CFR Group 3400.

4. POLICY/PROCEDURES.

a. Policy. Pursuant to 30 CFR Part 745, the Governor of a State with an approved regulatory program may request the Secretary to enter into a State-Federal cooperative agreement to provide for State regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR Group 3400. Because 30 CFR 745.11(b)(2) requires the State to submit a proposed agreement with the request, FODs and other Office of Surface Mining (OSM) officials will encourage interested States to informally consult with OSM during development of the proposed agreement to

facilitate more efficient use of resources and faster processing when the formal request is submitted. The FOD should advise the State that the initial submittal need not be signed by the Governor since terms of the agreement will be subject to negotiation with OSM and consideration of public comments. The FOD should advise the State to include funds to administer the cooperative agreement in the State's annual grant application. Requests for State-Federal cooperative agreements, amendments, or other agreement-related actions will be reviewed and processed promptly in accordance with the provisions of 30 CFR Part 745 and this directive. Amendments to an existing cooperative agreement may be initiated by either OSM or the State. State program amendment procedures in Directive REG-5, "Processing of Proposed State Regulatory Programs, Amendments and Part 732 Notifications," do not apply to the processing of cooperative agreements or amendments. Cooperative agreements are issued as permanent program rules. As such, both the proposed and final rules require the signature of the Assistant Secretary, Land and Minerals Management (AS/LMM). The State's request for funding or cooperative agreement activities is a part of its annual grant request or amended grant request, and is processed in accordance with the Federal Assistance Manual, Directive GMT-10-8.

b. Responsibilities

(1) Field Office Director

- o has lead agency responsibility for development and processing of cooperative agreement documents and cooperative agreement amendments;
- o negotiates terms of the cooperative agreement with the State; and holds any necessary hearings and meetings, and maintains the Administrative Record including the agency copy of the signed cooperative agreement document.

(2) Regional Director

- o prepares all necessary documentation and newspaper and Federal Register notices;
- o consults with other agencies as appropriate;
- o reviews proposed and final cooperative agreement documents, consults with the FOD where necessary and makes final recommendations for approval of the cooperative agreement;
- o coordinates any necessary legal reviews of cooperative agreement-related documents with the Field Solicitor; and
- o coordinates consultation with the State Historic Preservation Officer or with the Advisory Council on Historic Preservation when consultation is required.

(2) Preparation of Final Agreement:

(a) FOD conducts a public hearing, if one is requested by two or more persons, no sooner than 5 days before the close of the comment period, and prepares a verbatim transcript for the Administrative Record. If only one person requests a public hearing, a public meeting may be held instead, in which case the FOD shall prepare a summary for the record. The FOD also notifies the RD of any requests for consultation for the State Historic Preservation Officer or the Advisory Council for Historic Preservation. The RD will arrange any necessary meetings.

(b) Within 30 days of the close of the comment period, FOD provides the RD with one copy of all comments, evaluates all comments received, and negotiates the final form of the cooperative agreement with the State. If there are substantive changes from the proposed agreement published in the Federal Register, the RD provides the agencies listed in Appendix 2 with a minimum of 15 days to comment on the revised agreement, and conducts further negotiations with the State and the agencies as necessary to address their comments. The FOD documents changes for the Administrative Record.

(c) RD prepares:

(1) two originals of the final version of the cooperative agreement in signature-ready form (see Appendix 3 for the format of the signature copies).

(2) a draft Federal Register notice of final rulemaking, setting forth the decision approving or disapproving the cooperative agreement, the reasons for the decision, and, if approved, the full text of the final cooperative agreement. The notice summarizes all substantive comments received, explains the disposition of each comment, and, if a comment is accepted, describes how the agreement language has been altered.

(3) the findings required by 30 CFR 745.11(f). The finding that the State has sufficient budget, equipment and personnel to fully enforce its regulatory program is based on the FOD's evaluation of the State's existing resources and the State's grant application.

(d) RD transmits to the AD/PS, the two originals of the final cooperative agreement; the Federal Register notice of the final rule; a copy of each comment received; the transcript of any hearing or the summary of any public meeting; the minutes of any meetings with the State or other parties; any important conversation records or other relevant documents, and a memorandum to the AD/PS containing the RD's recommendation for approval or disapproval and the findings made under paragraph (c)(3) above. The cooperative agreement and the Federal Register notice should be available electronically in the event that minor changes are necessary after the documents leave the originating office. The RD will coordinate final review by the Field Solicitor, if required.

(e) The AD/PS will coordinate the review and clearance of the cooperative agreement and Federal Register notices in Headquarters. Within 15 days of receipt, AD/PS reviews the materials submitted by the RD to ensure that the final cooperative agreement, final Federal

Register notice, and other materials are consistent with agency policy and request Headquarter's Office of the Solicitor review. If revisions are necessary, the agreement, notice or other materials will be returned to the RD for appropriate changes.

(3) Procedures for Signature of the Cooperative Agreement:

(a) Upon concurrence with the RD's recommendation for approval,
AD/PS.

(1) prepares transmittal letter from the Director to the head of the State regulatory authority requesting that the State obtain the signature of the Governor on the two originals of the final cooperative agreement;

(2) prepares memorandum to the Secretary, through the AS/LMM, from the Director containing OSM's findings and recommendations, and ensures the Secretary's signature on the two originals of the cooperative agreement; and

(3) coordinates Headquarter's Office of the Solicitor review and surname of the final cooperative agreement.

(b) AD/PS forwards to OC the letter to the State with the two originals of the final cooperative agreement attached, the memorandum to the Secretary, and a copy of the Federal Register notice of the final rule.

(c) OC prepares a news release, if appropriate, forwards the letter, the memorandum, and the Federal Register notice to the Director for surnaming and signature, as appropriate.

(d) AD/PS mails the Director's letter, with the two originals of the cooperative agreement attached to the head of the State regulatory authority to obtain the Governor's signature. AD/PS holds (for further processing) the memorandum to the Secretary and the Federal Register notice.

(e) The State returns the two signed originals of the final cooperative agreement to the AD/PS. AD/PS then obtains the signature of the Secretary on the two originals.

(4) Publication of Final Agreement

(a) Upon signature of the agreement by the Secretary, AD/PS forwards the Federal Register notice to the Office of the Federal Register for publication.

(b) The Congressional Liaison Officer notifies the State's Congressional delegation of the action on the agreement prior to its publication in the Federal Register.

(c) FOD notifies the State regulatory authority of the Federal Register

publication date and provides the State with a copy of the notice.

(d) AD/PS transmits two original signed copies of the agreement through the RD to the FOD. The FOD retains one original copy in the Administrative Record and transmits the other original to the State. The AD/PS distributes copies to appropriate Headquarters offices.

5. Procedures for Amendments to Existing Cooperative Agreements.

OSM regulations at 30 CFR 745.14 specify that a State-Federal cooperative agreement may be amended by mutual agreement of the Secretary and the Governor of the State and that such amendments shall be adopted by Federal rulemaking in accordance with 30 CFR 745.11. Amendments are processed in accordance with the applicable article of the cooperative agreement and the procedures of section 4.c. of this directive, substituting the word "amendment" for "cooperative agreement." However, no news release need be prepared and the Congressional Liaison Officer need not be involved.

Where an amendment to a cooperative agreement is not extensive, only the amended portions of the existing agreement need be revised and submitted for approval (see Appendix 4). Where there are extensive revisions or additions, the entire agreement, as amended, will be submitted for approval.

In order to expedite the review of proposed amended portions of an existing agreement, the FOD should provide a copy of any relevant material necessary to ensure proper review.

The signature process for amendments is the same as for new agreements, i.e., after the notice and comment process and preparation of the final document, two originals of the amended portion or the entire cooperative agreement, as amended, must be signed by the Governor of the State and then by the Secretary.

The regulatory text of the rulemaking document prepared for Federal Register publication should contain for codification, only the amended portions of the cooperative agreement, unless the amendments are so extensive that republication of the entire cooperative agreement is warranted.

6. Reporting Requirements. None

7. References.

- a. "Federal Register Document Drafting Handbook," published by the Office of the Federal Register.
- b. OSM Directive INF-2, Administrative Record System.
- c. 30 CFR Part 745.
- d. OSM Directive GMT-10-8, Federal Assistance Manual.

8. Effect On Other Documents. Supersedes OSM Directive REG-22, "Developing and Processing State/Federal Cooperative Agreements," Transmittal No. 564, dated July 31, 1989.

9. Effective Date. Upon issuance.

10. Contact. Chief, Division of Regulatory Programs (202) 208-2776.

11. Keywords. Cooperative agreement, State-Federal cooperative agreement, Federal lands program, 30 CFR Part 745.

12. Appendices.

Appendix 1 Sample acknowledgment letters

Appendix 2 List of Federal agencies requested to review the proposed agreement

Appendix 3 Sample pages of a final cooperative agreement

Appendix 4 Sample of amended portion of a cooperative agreement



THE SECRETARY OF THE INTERIOR
WASHINGTON

Appendix 1
ACKNOWLEDGMENT
LETTER

Honorable [NAME]
Governor of [STATE]
[ADDRESS]

Dear Governor [NAME]:

Thank you for your letter of [DATE], concerning a proposed cooperative agreement between the Department of the Interior and the State of [STATE] which could provide for State regulation of surface coal mining and reclamation operations on Federal lands in [STATE].

The primary objectives of a cooperative agreement are to provide unified applications of environmental performance standards to surface coal mining and reclamation operations within a State and to minimize intergovernmental overlap and duplication. [STATE], in requesting this cooperative agreement, is demonstrating its desire to see these objectives achieved. The development of this agreement will demonstrate that the State-Federal partnership inherent in the Surface Mining Control and Reclamation Act can be accomplished.

The Office of Surface Mining has been directed to begin its review of your proposal and to work with the [STATE REGULATORY AUTHORITY] to complete the administrative process needed to adopt the agreement.

Please be assured of the Department's commitment to this cooperative agreement. If we can be of further assistance, please let us know.

Sincerely,

**Appendix 1
ACKNOWLEDGMENT
LETTER FROM
SECRETARY -
AMENDMENT**

Honorable [NAME]
Governor of [STATE]
[ADDRESS]

Dear Governor [NAME]:

Thank you for your letter of [DATE], concerning a proposed amendment to the cooperative agreement between the Department of the Interior and the State of [STATE] which provides for State regulation of surface coal mining and reclamation operations on Federal lands in [STATE].

The Office of Surface Mining has been directed to begin its review of your proposal and to work with your staff to complete the administrative process needed to adopt the amendment.

Please be assured of the Department's commitment to this cooperative agreement. If we can be of further assistance, please let us know.

Sincerely,

Distribution List for Proposed State-Federal Cooperative Agreements

Addresses are provided only where an agency has centralized all or part of its SMCRA-related review functions in one location nationwide. Field Offices should obtain addresses for the appropriate district, regional, area or field offices of the other agencies or agency units listed below with respect to the States within their area of responsibility.

Field offices should poll the other agencies or offices listed to determine their interest in receiving and commenting on proposed agreements and amendments. Field Offices also should periodically query agencies on their distribution lists to update addresses and, for those agencies not denoted by an asterisk, to ascertain whether they wish to remain on the comment solicitation list.

Director Office of Water Enforcement and Permits
Environmental Protection Agency, EN 336
401 M Street, S.W.
Washington, DC 20160

Regional Administrator
Environmental Protection Agency

Advisory Council on Historic Preservation
The Old Post Office Building, No. 809
1100 Pennsylvania Avenue, N.W.
Washington, DC 20004

State Historic Preservation Officer

Regional Director
Fish and Wildlife Service
Department of the Interior

Regional Forester (if agency is a FLMA within the State)
U.S. Forest Service
Department of Agriculture

Chief of Engineers (if agency is a FLMA within the State)
U.S. Army Corps of Engineers
CDRUSACE (DAEN-ASM-MM)
Washington, DC 20314

State Director
Bureau of Land Management
Department of the Interior

Chief, Energy, Mining and Minerals
National Park Service
Department of the Interior
P.O. Box 25287
Denver, CO 80225

Regional Director
National Park Service
Department of the Interior

Minerals Management Service
18th and C Streets, N.W.
Washington, DC 20240

[First Page of Cooperative Agreement]

COOPERATIVE AGREEMENT

The Governor of the Commonwealth of Kentucky (the Governor) and the Secretary of the Department of the Interior (the Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purpose, and Responsible Agencies

A. Authority

This Agreement is authorized by Section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of coal exploration operations not subject to 43 CFR Group 3400 and surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR Chapter VII, Subchapter D) and the approved Kentucky State Program (Program) for surface coal mining and reclamation operations on Federal lands.

B. Purposes

The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR Group 3400, (b) minimize intergovernmental duplication of effort, and (c) provide for uniform and effective application of the Program on all lands in Kentucky in accordance with the Act and the Program.

C. Responsible Administrative Agencies

The Kentucky Natural Resources and Environmental Protection Cabinet (NREPC), acting through the Department for Surface Mining Reclamation and Enforcement (DSMRE), shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation

[Signature Page - Intervening Pages Omitted]

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Approved:

Paul E. Patton
Commonwealth of Kentucky

Bruce Babbitt
Secretary of the Interior

August 18, 1998
Date

September 24, 1998
Date

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq., and implementing regulations, including 43 CFR Part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and implementing regulations, including 40 CFR Part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 et seq., and implementing regulations, including 50 CFR Part 402.
5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 et seq., 48 Stat 401.
6. The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668-668d, and implementing regulations.
7. The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701-718h et seq.
8. The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., and implementing regulations, including 36 CFR Part 800.
9. The Clean Air Act, 42 U.S.C. 7401 et seq., and implementing regulations.
10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and implementing regulations.
11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., and implementing regulations.
12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 et seq.
13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
14. Executive Order 11988 (May 24, 1977), for flood plain protection.
15. Executive Order 11990 (May 24, 1977), for wetlands protection.
16. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 et seq., and implementing regulations.
17. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 et seq.
18. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa et seq., as amended.
19. The Constitution of the United States.

20. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.
21. 30 CFR Chapter VII.
22. The Constitution of the Commonwealth of Kentucky and State Law.

APPENDIX 4
AMENDMENT TO A
COOPERATIVE AGREEMENT
SIGNATURE COPY

AMENDMENT TO THE COOPERATIVE AGREEMENT
BETWEEN THE SECRETARY OF THE INTERIOR AND THE
STATE OF (NAME THE STATE)

I approve the attached amendment to the cooperative agreement entered into by the Secretary of the Interior and the State of (NAME STATE) on (Date). The amendment consists of (DESCRIBE NATURE OF THE AMENDMENT). Federal regulations at 30 CFR 745.14 provide that an approved cooperative agreement may be amended by mutual agreement of the Secretary and the Governor of the State. Upon approval, the amendment portion of the agreement will be attached to the official file copies of the agreement.

Approved:

Secretary of the Interior

Governor of (NAME STATE)

Date

Date

Note: Where there are extensive revisions or additions to an existing agreement, the amendment document shown in this Appendix may not be appropriate. In such cases, the entire agreement, as amended, should be submitted

AMENDMENT TO THE COOPERATIVE AGREEMENT
BETWEEN THE SECRETARY OF THE INTERIOR AND THE
STATE OF (NAME STATE)

ARTICLE (NUMBER): (HEADING)

(CITE AMENDED TEXT)

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., as amended.

21. 30 CFR Chapter VII.

22. The Constitution of the State of [Name State].

23. [Name State] [Name State Mining Act]

24. [Name State] [Name State Regulatory Agency] Coal Mining and Reclamation Permanent Program, Rules and Regulations.