

## **PART 745--STATE-FEDERAL COOPERATIVE AGREEMENTS**

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Authority: 30 U.S.C. 1201 et seq. and 30 U.S.C. 181 et seq.

### **Sec. 745.1 Scope.**

FEDERAL REGISTER CITE: 48 FR 6911 (6939)

PUBLISHED DATE: 02/16/83

EFFECTIVE DATE: 03/18/83

This Part sets forth requirements for the development, approval, and administration of cooperative agreements under Section 523(c) of the Act.

### **Sec. 745.10 Information collection.**

FEDERAL REGISTER CITE: 48 FR 6911 (6939)

PUBLISHED DATE: 02/16/83

EFFECTIVE DATE: 03/18/83

The information-collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0028. The information is being collected pursuant to Section 523(c) of the Act (30 U.S.C. 1273(c)) and will be used to support a State's request for a State-Federal cooperative agreement or an amendment, termination, or reinstatement thereto.

The obligation to respond to the information-collection requirements of this part is mandatory.

### **Sec. 745.11 Application and agreement.**

FEDERAL REGISTER CITE: 48 Fed. Reg 6911 (6939)

PUBLISHED DATE: 02/16/83

EFFECTIVE DATE: 03/18/83

(a) The Governor of any State may request that the Secretary enter into a cooperative agreement with the State, provided the State has an approved State regulatory program or has submitted a regulatory program for approval under Part 731 of this Chapter, and has

or may have within the State surface coal mining and reclamation operations on Federal lands.

(b) A request for a cooperative agreement shall be submitted in writing and, except to the extent previously submitted in the State program, shall include the following information:

(1) Information sufficient for OSM to make findings in accordance with Paragraph (f) of this Section;

(2) A proposed agreement consistent with the requirements of this Part; and

(3) A certification by the Attorney General or the chief legal officer of the State regulatory authority that no State statutory, regulatory, or legal constraint exists which would preclude the State regulatory authority from fully carrying out the proposed cooperative agreement.

(c) OSM shall publish a notice of the request and the full text of the terms of the proposed cooperative agreement as submitted or as subsequently modified by OSM and the State in the Federal Register as a proposed rule. A notice of the request and a summary of the terms of the proposed agreement shall also be published in a newspaper(s) of general circulation throughout the State. Both notices shall include:

(1) The location at which a copy of the request submitted by the State may be obtained; and

(2) A date, not less than 30 days after publication of the notices, before which members of the public may submit written comments on the request and the person to whom comments should be addressed.

(d) A public hearing shall be held within the comment period in a suitable location in the State requesting the cooperative agreement. This hearing may be combined with public hearings required under Part 732 of this Chapter for the Secretary's consideration of approval of a State program submission, if appropriate. The date, time, and place of the public hearing(s) on the request will be published in the Federal Register not less than 15 days prior to the date of the hearing.

(e) Before the expiration of the comment period, OSM shall consult with the Bureau of Land Management, Fish and Wildlife Service, and Federal land management agencies, as appropriate, with respect to the proposed cooperative agreement.

(f) OSM shall recommend to the Secretary that a cooperative agreement be entered into with a State, if OSM finds that:

(1) The State has an approved State regulatory program;

(2) The State regulatory authority has sufficient budget, equipment, and personnel to enforce fully its regulatory program on lands subject to this Part in the State; and

(3) The State has the legal authority to enter into the cooperative agreement.

(g) The Secretary shall publish in the Federal Register his or her decision with respect to a request by a State to enter into a cooperative agreement and the reasons therefor and the full text of the cooperative agreement.

#### **Sec. 745.12 Terms.**

FEDERAL REGISTER CITE: 48 FR 6911 (6940)

PUBLISHED DATE: 02/16/83

EFFECTIVE DATE: 03/18/83

Each cooperative agreement shall include:

- (a) Terms obligating the State regulatory authority to inspect all surface coal mining and reclamation operations on Federal lands in accordance with the State regulatory program and to enforce the State program on Federal lands;
- (b) A description of the powers and authority reserved by the Secretary, including, but not limited to, those specified under Section 745.13;
- (c) Provisions for the administration and enforcement by OSM and the State of this Subchapter so as to minimize overlap and duplication;
- (d) Provisions for regular reports by the State regulatory authority to OSM on the results of the State's implementation and administration of the cooperative agreement.
- (e) Terms requiring the State regulatory authority to maintain sufficient personnel and facilities to comply with the terms of the cooperative agreement, and to notify OSM of any substantial change in State statutes, regulations, funding, staff, or other changes which would affect the State's ability to carry out the terms of the cooperative agreement;
- (f) Terms for coordination among the State regulatory authority, the Federal land management agency, the Bureau of Land Management and OSM;
- (g) Terms obligating the State regulatory authority to--
  - (1) Make available to OSM information on any action taken regarding any permit application for surface coal mining and reclamation operations on Federal lands; and
  - (2) Where lands containing leased Federal coal are involved, provide OSM, in the form specified by OSM in consultation with the State, with written findings indicating that each permit application is in compliance with the terms of the regulatory program and a technical analysis of each permit application to assist OSM in meeting its responsibilities under other applicable Federal laws and regulations.

**Sec. 745.13 Authority reserved by the Secretary.**

FEDERAL REGISTER CITE: 48 FR 13984 (13984)

PUBLISHED DATE: 04/01/83

EFFECTIVE DATE: 03/18/83

The Secretary shall not delegate to any State, nor shall any cooperative agreement under this Part be construed to delegate to any State, authority to--

- (a) Designate Federal lands as unsuitable for surface coal mining under Subchapter F of this Chapter or terminate such designations;
- (b) Comply with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq., and Federal laws and regulations other than the Act;
- (c) Develop land-use management plans for Federal lands where the surface estate is federally owned;
- (d) Regulate noncoal mining activities on Federal lands;
- (e) Determine when, where, and how to lease Federal coal and how much to lease;
- (f) Develop terms for Federal coal leases, including any special terms relating to mining and reclamation procedures;
- (g) Evaluate Federal coal resources;

- (h) Establish royalties, rents, and bonuses charged in connection with Federal coal leases;
- (i) Approve mining plans or modifications thereto;
- (j) Enforce Federal lease terms, including diligent- development and maximum economic-recovery requirements;
- (k) Approve or determine post-mining land uses for Federal lands where the surface estate is federally owned;
- (l) Release Federal lease bonds;
- (m) Evaluate the State's administration and enforcement of the approved State program and implementation of the cooperative agreement on Federal lands;
- (n) Comply with the inspection, enforcement, and civil penalties requirements of Parts 842 and 843 of this Chapter except as provided under Section 740.4(c)(5) of this Chapter;
- (o) Determine valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under Section 522(e)(1) or (2) of the Act; or
- (p) Determine that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining and reclamation operations on any Federal lands within the boundaries of any national forest under Section 522(e)(2) of the Act.

**Sec. 745.14 Amendments.**

FEDERAL REGISTER CITE: 48 FR 6911 (6940)  
PUBLISHED DATE: 02/16/83  
EFFECTIVE DATE: 03/18/83

A cooperative agreement which has been approved pursuant to Section 745.11 may be amended by mutual agreement of the Secretary and the Governor of a State. Amendments shall be adopted by Federal rulemaking, in accordance with Section 745.11.

**Sec. 745.15 Termination.**

FEDERAL REGISTER CITE: 48 FR 6911 (6940)  
PUBLISHED DATE: 02/16/83  
EFFECTIVE DATE: 03/18/83

(a) A cooperative agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the cooperative agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

(b) A cooperative agreement may be terminated by the Secretary after giving notice to the State regulatory authority and affording the State regulatory authority and the public an opportunity for a public hearing and comment period, in accordance with the cooperative agreement, if the Secretary finds that:

(1) The State regulatory authority has substantially failed to comply with the requirements of this Subchapter, the State program, or the cooperative agreement, or

(2) The State regulatory authority has failed to comply with any undertaking by the State in the cooperative agreement upon which approval of the State program, cooperative agreement, or grant by OSM for administration or enforcement of the State program or cooperative agreement was based.

(c) A cooperative agreement shall terminate--

(1) When no longer authorized by Federal law or the applicable State laws and regulations; or

(2) Upon termination or withdrawal of the Secretary's approval of the applicable State program.

#### **Sec. 745.16 Reinstatement.**

FEDERAL REGISTER CITE: 48 Fed. Reg 6911 (6941)

PUBLISHED DATE: 02/16/83

EFFECTIVE DATE: 03/18/83

(a) A State may apply for reinstatement of the cooperative agreement by providing written evidence to OSM that the State has remedied all defects for which the agreement was terminated and is fully capable of carrying out the cooperative agreement. Any reinstatement shall be by Federal rulemaking in accordance with Section 745.11.

(b) OSM may recommend approval of the reinstatement to the Secretary if it finds that the State meets all the requirements for the initial approval of a cooperative agreement under this Subchapter.

(c) The Secretary may approve reinstatement of a cooperative agreement if the Secretary concurs in findings of OSM which recommended that approval.