

operations, the person conducting those operations shall submit to OSM, in duplicate, a notice of intention to cease or abandon those operations, with a statement of the number of acres affected by the operations, the extent and kind of reclamation accomplished and the structures and other facilities that are to be removed from or remain on the permit area.

(ii) Upon receipt of this notice, the Bureau of Land Management and the appropriate Federal land management agency shall promptly make joint inspections to determine whether all operations have been completed in accordance with the requirements of 43 CFR parts 3400, the lease or licenses and the mining plan. Where all of these requirements have been complied with, the liability under the lease bond of the person conducting surface coal mining and reclamation operations shall be terminated.

(3) Where OSM is the regulatory authority, public hearings held with respect to final abandonment and releases of the performance bonds shall be in accordance with 5 U.S.C. 554 and 43 CFR part 4.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

## 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.*

SOURCE: 48 FR 6939, Feb. 16, 1983, unless otherwise noted.

### § 745.1 Scope.

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

### § 745.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and

Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029-0092. This information is needed to implement section 523(c) of the Act, which allows States to regulate surface coal mining operations on Federal lands under certain conditions. States that desire to enter into cooperative agreements to do so must respond to obtain a benefit.

(b) OSM estimates that the public reporting burden for this part will average 1,364 hours per respondent, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, N.W., Washington, DC 20503. Please refer to OMB Control Number 1029-0092 in any correspondence.

[64 FR 70831, Dec. 17, 1999]

### § 745.11 Application and agreement.

(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

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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.

### § 745.12 Terms.

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 § 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

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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.

#### § 745.13 Authority reserved by the Secretary.

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 SMCRA;
- (c) Develop land use management plans for Federal lands where the surface estate is federally-owned;
- (d) Regulate non-coal 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;
  - (1) 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 chap-

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ter except as provided under § 740.4(c)(5) of this chapter;

(o) Determine whether a person has valid existing rights to conduct surface coal mining operations on Federal lands within the areas specified in § 761.11(a) and (b) of this chapter; or

(p) Issue findings on whether there are significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations on Federal lands within a national forest, as specified in § 761.11(b) of this chapter.

[48 FR 6939, Feb. 16, 1983, as amended at 64 FR 70831, Dec. 17, 1999]

#### § 745.14 Amendments.

A cooperative agreement which has been approved pursuant to § 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 § 745.11.

#### § 745.15 Termination.

(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—

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(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.

### § 745.16 Reinstatement.

(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 rule-making in accordance with § 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.

## PART 746—REVIEW AND APPROVAL OF MINING PLANS

Sec.

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746.11 General requirements.

746.13 Decision document and recommendation on mining plan.

746.14 Approval, disapproval or conditional approval, of mining plan.

746.17 Term of approval.

746.18 Mining plan modification.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

SOURCE: 48 FR 6941, Feb. 16, 1983, unless otherwise noted.

### § 746.1 Scope.

This part provides the process and requirements for the review and approval, disapproval or conditional approval of mining plans on lands containing leased Federal coal.

### § 746.10 Information collection.

The information collection requirements contained in this section have been approved by OSM of Management and Budget under 44 U.S.C. 3507 and as-

signed clearance number 1029-0026. The information is being collected to determine compliance with section 523 of the Act (30 U.S.C. 1273) and this part. The obligation to respond to the information collection requirements of this part is mandatory.

### § 746.11 General requirements.

(a) No person shall conduct surface coal mining and reclamation operations on lands containing leased Federal coal until the Secretary has approved the mining plan.

(b) Surface coal mining and reclamation operations on lands containing leased Federal coal shall be conducted in accordance with a permit issued in accordance with this subchapter, any lease terms and conditions, and the approved mining plan.

### § 746.13 Decision document and recommendation on mining plan.

OSM shall prepare and submit to the Secretary a decision document recommending approval, disapproval or conditional approval of the mining plan to the Secretary. The recommendation shall be based, at a minimum, upon:

(a) The permit application package, including the resource recovery and protection plan;

(b) Information prepared in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*;

(c) Documentation assuring compliance with the applicable requirements of other Federal laws, regulations and executive orders other than the Act;

(d) Comments and recommendations or concurrence of other Federal agencies, as applicable, and the public;

(e) The findings and recommendations of the Bureau of Land Management with respect to the resource recovery and protection plan and other requirements of the lease and the Mineral Leasing Act;

(f) The findings and recommendations of the regulatory authority with respect to the permit application and the State program; and

(g) The findings and recommendations of OSM with respect to the additional requirements of this subchapter.