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TYPE: Directive

SUBJECT-NO: REG-22

TRANSMITTAL-NO: 407

SUBJECT: Developing and Processing State-Federal Cooperative Agreements for State Regulation on Federal Lands

ISSUED-DATE: 12/29/87

APPROVAL: Jed D. Christensen, Director

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

DEFINITIONS: 2. Definitions.

State-Federal Cooperative Agreement. The formal document executed pursuant to 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 administration and regulation of surface coal mining and reclamation operations on Federal lands, as authorized by section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and coal exploration on Federal lands not subject to 43 CFR Part 3480, Subparts 3480-3487. These agreements are known as "programmatic" cooperative agreements, as opposed to those with funds included, known as "funding" cooperative agreements.

POLICY-PROCEDURE: 3. Policy/Procedures.

a. Policy. Pursuant to 30 CFR Part 745, Governors of States may request that the Secretary enter into State-Federal cooperative agreements to provide for State regulation of surface coal mining and reclamation operations and certain coal exploration operations on Federal lands within the State. Because 30 CFR 745.11(b)(2) requires the State to submit a proposed agreement with the request, Field Office Directors and other OSMRE officials shall encourage interested States to informally consult with OSMRE during development of the proposed agreement to facilitate more efficient use of resources and faster processing when the formal request is submitted. Requests for State-Federal cooperative agreements, amendments, or other agreement-related actions shall be reviewed and processed promptly in a manner consistent with the provisions of 30 CFR Part 745.

b. Responsibilities.

(1) Field Office Director (FOD).

(a) Prepare a letter acknowledging the receipt of a request for a State-Federal cooperative agreement or amendment, for the Secretary's (or his/her designee) signature, within 3 days of receipt of the request by the FOD.

(b) Coordinate agreement and amendment review procedures:

1 Solicit comments from appropriate agencies and request any necessary technical or legal evaluations from the Assistant Director, Field Operations (ADFO).

2 Evaluate the State's request for an agreement and the proposed agreement to determine whether the content requirements of 30 CFR 745.11(b) and 745.12 have been met. Attempt to resolve any deficiencies with the State.

3 Prepare a draft Federal Register notice announcing the receipt of and inviting comments on the proposed agreement or amendment, and stating the date, time and location of the scheduled public hearing.

4 Schedule a public hearing on the agreement or amendment, hold the public hearing or meeting if one is requested, and prepare a verbatim transcript of any hearing and a written summary of any meeting.

5 Publish, in a newspaper(s) of general circulation within the State, a notice of the request and a summary of the terms of the proposed agreement or amendment.

6 Evaluate all comments received and negotiate the final form of the agreement or amendment with the State.

7 Recommend approval or disapproval of the agreement or amendment in accordance with 30 CFR 745.11(f).

8 Prepare a draft Federal Register notice announcing the decision on the request and the reasons for the decision and, if approved, the full text of the agreement or amendment.

(c) Enter all appropriate documents in the administrative record of the State program and provide properly numbered copies of all such documents to the administrative record office in Washington, D.C., the administrative record facility in the appropriate Field Operations office, and the State regulatory authority office which maintains the State's copy of the administrative record.

(d) Notify the State of Federal Register notice publication dates and provide the State with a copy of all proposed rules, reopening notices, final rules and other Federal Register notices concerning agreements and amendments.

(e) Notify ADFO of any requests by the State Historic Preservation Officer (SHPO) or the Advisory Council on Historic Preservation for consultation on the proposed agreement.

(2) Assistant Director, Field Operations (ADFO).

(a) Review all draft Federal Register notices for accuracy and completeness and for consistency with respect to format and policy concerns, and consult with FOD as appropriate.

(b) Review FOD's recommendations for approval or denial of proposed agreements and amendments, and consult with FOD as appropriate.

(c) To the extent deemed appropriate, participate in meetings and otherwise communicate with the State as requested.

(d) Provide technical assistance in evaluating proposed agreements and amendments as requested by FOD.

(e) Coordinate consultation on proposed agreements and amendments with the SHPO or the Advisory Council on Historic Preservation when consultation is required by the SHPO or the Council.

(3) Assistant Director, Program Policy (ADPP).

(a) Review all draft Federal Register notices and FOD and ADFO recommendations concerning agreements and amendments to insure consistency with respect to format and policy concerns.

(b) Prepare transmittal letters and memoranda necessary to obtain all required signatures on the agreement or amendment, and on Federal Register notices announcing the agreement.

(c) Develop for the Director's signature agency policy guidance in response to questions raised by proposed agreements or amendments.

(d) Coordinate review of all matters requiring contact with the Washington Office of the Solicitor.

(e) Answer procedural questions arising from application of this directive.

(f) Assure that all cooperative agreements, amendments and Federal Register notices are entered into COALEX.

(g) Notify the Congressional Liaison Officer when the Secretary and the Governor have signed a cooperative agreement.

(4) Deputy Director, Operations and Technical Services (DDOTS).

(a) Review all Federal Register notices (proposed rules) announcing the receipt of proposed cooperative agreements or amendments, or the reopening of the comment period (if necessary).

(b) Review all Federal Register notices (final rules) containing agreements or amendments in final form and all ADPP recommendations concerning approval or disapproval of those agreements or amendments.

(5) Director.

(a) Review DDOTS recommendations.

(b) Transmit the official copy of the agreement or amendment to the State for the Governor's signature.

(c) Forward Federal Register notices of proposed and final actions on the agreement or amendment, to the Assistant Secretary-Land and Minerals Management (AS-LMM) (or his/her designee) for signature or other disposition.

(d) Forward recommendations together with the official copy of the agreement or amendment as signed by the Governor to the Secretary (or his/her designee) for signature or other disposition.

(6) Regulatory Development and Issues Management Staff (RDIM).

(a) Coordinate and track the flow of documents and correspondence.

(b) Provide the Public Affairs Officer with a copy of the draft Federal Register notice announcing final action on the agreement, for preparation of a news release or news release waiver prior to transmitting the notice to the Office of the Federal Register.

(c) Communicate any concerns expressed by the Office of the Federal Register with respect to draft Federal Register notices to the signing official, and coordinate the resolution of these concerns.

(7) The Public Affairs Officer is responsible for preparing a news release or news release waiver, as appropriate, to accompany Federal Register notices announcing final actions concerning the cooperative agreement.

(8) The Congressional Liaison Officer is responsible for notifying the State congressional delegation of any final actions approving or terminating cooperative agreements.

c. Procedures.

(1) State Requests for Cooperative Agreements.

(a) Upon receiving a formal gubernatorial request to enter into a State-Federal cooperative agreement and a copy of the proposed agreement, the FOD shall prepare an acknowledgement letter from the Secretary to the Governor (see Appendix 1) and forward it through ADFO to RDIM for appropriate routing to obtain the Secretary's signature.

(b) The FOD shall promptly forward one copy of the request and the proposed agreement to the ADFO and two copies to the ADPP. FOD simultaneously establishes (and subsequently maintains) the Administrative Record File in accordance with OSMRE Directive INF-2.

(c) The FOD shall determine if the request and proposed agreement comply with the requirements of 30 CFR 745.11(b) and 745.12. If a technical or legal evaluation is desired, the FOD shall request the ADFO to provide the evaluation. Any request for review by the Office of the Solicitor in Washington must be cleared through the ADPP. If the FOD determines that the information submitted is insufficient, he/she shall notify the State in writing, specifying the additional information needed to make the request complete in accordance with the requirements of 30 CFR 745.11(b) and identifying the changes needed to make the proposed agreement consistent with 30 CFR 745.12.

(d) The FOD shall prepare a revised form of the proposed agreement. Although the agreement must contain all mandatory terms as specified in 30 CFR 745.12, the substance of certain of these terms is negotiable with the State. For example, 30 CFR 745.12(d) requires regular reports, but it does not establish a specific format or frequency for these reports. Such details shall be negotiated with the State, and the State shall be provided an opportunity to review and comment on the revised agreement prior to forwarding to the ADFO.

(e) The FOD shall prepare and forward to the ADFO a draft Federal Register notice (proposed rule), following the format requirements of the "Federal Register Document Drafting Handbook" and the content requirements of 30 CFR Part 745, announcing receipt of the request and including the full text of the proposed agreement as revised. Attachment 1 shall be used as a guide when preparing this notice.

The notice shall provide for a minimum 30-day public comment period and shall specify the date, time and location of the public hearing, if one is requested. The hearing shall be scheduled no sooner than 15 days following publication of the notice. The notice shall also specify the location(s) at which a copy of the request submitted by the State can be obtained and the name and address of the agency official to whom comments should be addressed.

(f) The FOD shall provide one copy of the proposed agreement to the agencies listed in Appendix 2, soliciting their comments (allow a minimum of 30 days) and further consulting with them as necessary. Copies of all comments received shall be entered into the Administrative Record and forwarded to the ADFO and ADPP.

(g) The FOD shall prepare a concise general public notice of the State's request. The notice shall contain a summary of the terms of the proposed agreement; the date, time and location of the public hearing if one is requested; the location at which a copy of the State's request can be obtained; and the person to whom comments should be addressed. The FOD shall arrange for publication of this general notice in a newspaper(s) of general circulation within the State upon publication in the Federal Register of the notice of the proposed agreement.

(h) The ADFO shall review the Federal Register notice for policy, format and style concerns, and make any necessary corrections. When satisfied the ADFO shall forward the proposed notice to the ADPP.

(i) The ADPP shall review the agreement and the draft proposed rule Federal Register notice for policy and other concerns. If the ADPP is not satisfied, he shall consult with the ADFO to resolve any outstanding issues. When satisfied, ADPP shall forward the Federal Register notice to RDIM for surnaming or signature, as appropriate, by the Office of the Solicitor, DDOTS, the Director and AS-LMM. RDIM then forwards the notice to the Office of the Federal Register for publication. Upon publication of the notice, FOD sends a copy to the State regulatory authority.

(j) If a public hearing is requested by two or more persons, the FOD shall conduct the hearing no sooner than 5 days before the close of the comment period, and prepare a verbatim transcript for the administrative record. If only one person requests a hearing, a public meeting may be held instead, in which case the FOD shall prepare a summary for the record. The FOD shall also notify ADFO of any requests by the SHPO or the Advisory Council for Historic Preservation for consultation, and arrange any necessary meetings.

(k) Following the close of the comment period, the FOD shall provide ADFO and ADPP with one copy of all comments and evaluate all comments received and negotiate the final form of the agreement with the State within 30 days of the close of the comment period. If substantive changes are made, the FOD shall provide the agencies listed in Appendix 2 with a minimum of 15 days to comment on the revised agreement, and shall conduct further negotiations with the State and the agencies as necessary.

(1) The FOD shall determine if the State meets the requirements of 30 CFR 745.11(f) and shall prepare the final cooperative agreement in signature-ready form (see Attachment 2), a draft Federal Register notice (final rule) setting forth this determination, the decision approving or disapproving the proposed cooperative agreement, the reasons for the decision, and, if approved, the full text of the cooperative agreement in final form. (See 49 FR 7843 for a sample final rule notice.) The notice shall acknowledge all comments received, explain the disposition of each comment that suggests revision of the agreement or other substantive comments, and, if a comment is accepted, describe how the agreement language has been altered.

(m) The FOD shall forward two official copies of the cooperative agreement in signature-ready form, the draft Federal Register notice (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, a copy of the Administrative Record log, and a recommendation for approval or disapproval to the ADFO.

(n) The ADFO shall review the materials submitted by the FOD for policy, format and style concerns, and forward them to RDIM for forwarding to ADPP. Any items found unacceptable by ADFO are returned to FOD for revision. ADFO completes actions within 30 days of receipt from FOD.

(O) The ADPP shall review the materials submitted by the ADFO to ensure that the final form of the cooperative agreement and other materials or other materials are consistent with agency policy. If unacceptable to the ADPP, the agreement or other materials shall be returned to the FOD, through ADFO, for appropriate changes. Upon ADPP concurrence with a recommendation for approval, he/she shall prepare a 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 official copies of the agreement. The ADPP shall then forward this letter (with the two official copies of the agreement attached) to RDIM for surnaming by the Office of the Solicitor and the DDOTS, and for signature by the Director. ADPP shall also forward a copy of the draft Federal Register notice to RDIM for use by the Public Affairs Officer in preparation of a news release. ADPP completes actions within 30 days of receipt from ADFO.

(p) After signing the letter transmitting the official copies of the agreement to the State requesting the Governor's signature, the Director shall forward the package to RDIM for transmittal to the head of the State regulatory authority.

(q) Upon receipt of the official copies of the agreement signed by the Governor, the ADPP shall prepare the Director's recommendation memorandum to the Secretary (or his/her designee) for approval of the agreement. This recommendation, together with the official copies of the agreement signed by the Governor, the Federal Register notice announcing the decision, and the news release received from the Public Affairs Officer shall be forwarded to RDIM for surnaming or signature, as appropriate, by the Office of the Solicitor, the DDOTS, the Director, AS-LMM. and the Secretary (or his/her designee). After the Secretary's (or his/her designee's) signature has been obtained on the official copies of the agreement, RDIM shall forward the Federal Register notice to the Office of the Federal Register for publication and ADPP shall notify the Congressional Liaison Officer.

(r) Upon signature by the Secretary (or his/her designee), but prior to publication of the decision in the Federal Register, the Congressional Liaison Officer shall notify the State's Congressional delegation of the decision.

(s) The FOD shall notify the State regulatory authority of the date of publication of the decision in the Federal Register and shall provide the State with a copy of the notice.

(t) The ADPP shall enter the Federal Register notice and codified materials into COALEX.

(u) RDIM shall retain one official signed copy of the agreement; the other shall be transmitted to the State through FOD for retention by the State. RDIM shall distribute copies to appropriate Headquarters officers, and FOD shall provide ADFO with a copy.

(2) State Requests for Amendments.

The Federal 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. The rules further state that amendments shall be adopted by Federal rulemaking in accordance with 30 CFR 745.11. hence, any amendments shall be processed in accordance with the provisions of the applicable article of the cooperative agreement and the procedures set forth in section 3.c.(1) of this directive, except that no news releases need be prepared and the Congressional Liaison Officer need not be involved.

REPORTING-REQUIR: 4. Reporting Requirements. None.

REFERENCES: 5. References.

a. "Federal Register Document Drafting Handbook," published by the Office of the Federal Register.

b. OSMRE Directive INF-2, "Administrative Record System".

c. 30 CFR Part 745.

EFFECT-OTHER-DOC: 6. Effect On Other Documents. Supersedes OSMRE Directive REG-3, "Developing and Processing State/Federal Cooperative Agreements", Transmittal No. 49, dated April 10, 1980.

EFFECTIVE-DATE: 7. Effective Date. Upon Issuance.

CONTACT: 8. Contact. Branch of Federal and Indian Programs, Division of Regulatory Programs, (202) 343-1864.

DIRECT-HISTORY: 1. REG-22, Transmittal No. 407, 12/29/87 supersedes REG-3, Transmittal No. 49, 04/10/80.

CROSS-REF: REG-22, Transmittal No. 407, 12/29/87 supersedes REG-3, Transmittal No. 49, 04/10/80.

ATTACHMENTS: [Attachment]

APPENDIX 1 Sample

Acknowledgement Letter

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 22, 1985

Honorable James R. Thompson
Governor of Illinois
Springfield, Illinois 62706

Dear Governor Thompson:

Thank you for your letter of November 7, 1986, concerning a proposed cooperative agreement between the Department of the Interior and the State of Illinois which would provide for State regulation of surface coal mining and reclamation operations on Federal lands in Illinois.

The primary objectives of a cooperative agreement are to provide for unified application of environmental performance standards to surface coal mining and reclamation operations within a State and to minimize intergovernmental overlap and duplication. Illinois, 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 Reclamation and Enforcement 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 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,

DONALD PAUL HODEL

cc: Assistant Director, Eastern Field Operations Director, Springfield Field Office

APPENDIX 2

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.

All field offices must distribute all proposed agreements and amendments to the agencies denoted by an asterisk (*) and any other Federal land management agency (FLMA) whose holdings may be affected. 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 should also 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, D.C. 20160

* Regional Administrator
Environmental Protection Agency

* Advisory Council on Historic Preservation
The Old Post Office Building, No. 809
1100 Pennsylvania Avenue, N.W.
Washington, D.C. 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)
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, D.C. 20314

Chief, Division of Conservation and Development
Bureau of Mines
Department of the Interior
2401 E Street, N.W.
Washington, D.C. 20241

* 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, D.C. 20240[See hard copy for:]

1. Attachment 1, Federal Register Notice of Proposed Agreement (52 FR 9402 - 52 FR 9412 [11 pages]

2. Attachment 2, First and last pages of sample Cooperative Agreement, plus Appendix A of sample agreement [5 pages]