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	U.S. DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVE SYSTEM**	**Subject Number:** GMT - 10 - 6 **Transmittal Number:** 832 **Date:** FEB 17 1995

Subject:

FEDERAL ASSISTANCE MANUAL

Approval:	**Title:** Director

EXPLANATION OF CHANGES: This Change Notice implements the revised Federal Lands Funding Policy through issuance of revised Chapter 3-10, "Funding for State Regulation on Federal Lands." This chapter supersedes the August 1982 policy paper, "Funding Policy for State/Federal Cooperative Agreements for Regulating on Federal Lands."

FILING INSTRUCTIONS:

Remove	Insert
Chapter 3-10 (2 pages)	Chapter 3-10 (5 pages)
Appendix 111	
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CHANGE NOTICE

CHAPTER 3-10
FUNDING FOR STATE REGULATION ON FEDERAL LANDS

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3-10-00 PURPOSE

This chapter establishes policy and procedures for reimbursing primacy States for regulating surface coal mining on Federal lands.

3-10-10 POLICY IMPLEMENTATION

A. This policy becomes effective upon issuance of this chapter. Except as noted in 3-10-10B., the initial effect of this policy on funding will be implemented over a two-year period. For example, if the implementation of this policy results in an overall increase in a State's funding match by six percent, the State shall be allowed to increase its funding by three percent each year until the full six percent increase is achieved in the second year. Conversely, if the implementation of this policy results in a six percent decrease in State share funding, the full six percent decrease will not be realized until the second year.

B. If a State is unable to implement this policy within two years because of the timing of its next legislative session, an alternate implementation schedule may be approved by the Field Office Director. However, this policy must be fully implemented in the first fiscal year after the State Legislature can consider the funding issue.

3-10-20 POLICY

A. According to Section 523(c) of SMCRA, any State with an approved State regulatory program may elect to enter into a Cooperative Agreement with the Secretary of the Interior to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that the State has the necessary personnel and funding to fully implement such an agreement in accordance with the provisions of SMCRA.

3-10-20 (Continued)

B. The amount of Federal funds that may be granted to a State to implement a cooperative agreement for surface coal mining on Federal lands is limited by law and regulation. Section 705(c) of SMCRA allows the Secretary to increase the annual grant to a State by an amount equal to the anticipated Federal government expenditures for such regulation. The amount of the grant is also limited by 30 CFR 735.16(c), which provides that no grant shall exceed the actual costs to the State.

C. OSM has established three options for calculating the level of Federal funding to a State under a cooperative agreement. Either of these methods may be selected by the State and used as a basis for supporting the Federal lands funding level included in the grant application. The entire grant package shall be reviewed by the Field Office to assure that it includes required documentation and falls within statutory and regulatory funding limits.

D. The option chosen by the State must be used consistently to estimate its costs of work on Federal lands; the option chosen and the resulting percent approved at grant award must be used for reimbursement of costs for the entire grant period.

E. States with approved Federal lands cooperative agreements, which do not request additional funding above the fifty percent cost-sharing ratio for the work on non-Federal lands, are not required to separate costs for work on Federal lands or to comply with the requirements to provide supplemental information.

3-10-30 OPTIONS FOR CALCULATING FEDERAL LANDS COSTS

A. Background

1. OSM has developed the following three options for calculating the level of Federal funding to a State under a Federal Lands Cooperative Agreement. The Federal lands funding level, calculated using the selected option, is to be added to the non-Federal lands funding (typically 50% of the program cost) to determine the Regulatory Grant amount.

2. Under all options, anticipated permits may be included in the Federal lands funding calculations. An anticipated permit is a permit application which has not been received but is expected to be submitted during the grant period or a permit application that has been received but not determined to be administratively complete. Each anticipated permit must be identified to the extent possible by estimated date of submittal, location of mine, and, if the workload option is utilized, the work activities associated with the area anticipated during the grant year.

3-10-30 (Continued)

B. Options

1. Acreage Option

a. Under this option, the ratio of the sum of the area of all permitted Federal lands to the sum of the area of all permitted lands (non-Indian) in the State is calculated. This ratio is then multiplied by the total State Regulatory Program cost estimate to obtain the Federal lands funding share.

b. This method is based on calculating a ratio of Federal land acres anticipated to be under permit and permit application to the total acres within a State under similar status, and then applying this ratio to the State's overall estimate of the cost to administer the surface mining program on lands within its borders. This option requires a listing of each mine for which a permit is anticipated or that is under permit during the grant period and indicating the number of acres, by mine, that are Federal and non-Federal.

2. Area-Weighted Average Option

a. Under this option, the ratio of Federal lands to the total of all lands (non-Indian) is calculated for each permit area. Following this calculation, the appropriate funding level for each permit area is determined as follows:

Percent Federal Lands	Federal Lands Funding Percent	Federal Funding Percent
0	0	50
>0 but ≤ 25	25	62.5
>25 but ≤ 50	50	75
>50 but ≤75	75	87.5
>75	100	100

b. The Federal funding percent for each permit area is then used to determine the federally-funded acres in each permit area. The ratio of the total federally-funded acres to the total acres is then multiplied by the estimated total State regulatory program cost to obtain the total Federal funding amount.

3-10-30B.3. (Continued)

3. Workload Option

a. Under this option, the Federal cost sharing percentage is based on workload and cost projections for the period of the grant. Cost projections may be based on average costs for permit application processing and inspection/enforcement activities multiplied by the workload projection. Any unique costs not included in the above two items may also be added to the State's cost estimate.

b. The State must use its own processes and procedures in determining the workload involved in the regulation on Federal lands. The State must provide item-specific information in the analysis of its workload, and must include data from its records and other supportable information to justify calculations for both workload and the State/Federal distribution.

3-10-40 RESPONSIBILITIES

A. States shall prepare each grant application in accordance with any requirements of the approved Cooperative Agreement and the procedural requirements outlined in the FAM. In addition, as part of the grant application the State must provide:

1. A detailed breakdown of the estimated total cost of implementing the regulatory program, including an explanation of the method and calculations used.

2. A detailed estimate of the Federal lands workload to be conducted under the Cooperative Agreement, discussed in terms of the specific permitting, inspection and enforcement, and administrative requirements of the State regulatory program and the Cooperative Agreement as outlined in this temporary directive to support the workload option when utilized.

3. A listing of each mine covered by the grant application and the actual permit area acreage of both Federal and non-Federal lands to support the acreage option when utilized.

B. OSM

1. Field Office Directors (FOD) shall:

a. Prepare State-specific data on the projected costs of inspection and enforcement and administration under a Federal Program in the absence of a Cooperative Agreement;

b. Provide the State a copy of the completed cost projections; and

3-10-40B. (Continued)

c. Review the workload projections, cost estimates, anticipated permit data and resulting Federal assistance request submitted by the State, and comparing these with the Federal cost estimate. Based on the results of this comparison and consideration of other pertinent factors, the FOD should make every effort to resolve differences within the framework of this Directive.

2. Chief, Federal Programs Division, Western Support Center shall provide detailed data on the cost for OSM to administer permitting on Federal lands in the western United States and coordinating the assimilation of data and information to support the determination of the amount the Federal Government would have expended to administer Federal lands in the western United States.

3. Chief, Permitting, Knoxville Field Office shall provide detailed data on the cost for OSM to administer permitting on Federal lands in the eastern United States.

4. Chief, Program Support Division, Eastern Support Center coordinate with the Chief, Permitting, Knoxville Field Office, on furnishing permitting information to support the determination of the amount the Federal Government would have expended to administer permitting on Federal lands in the eastern United States and coordinating the assimilation of data and information to support the determination of the amount the Federal Government would have expended to administer Federal lands in the eastern United States.

3-10-50 COSTS

A. Only the cost for work performed on Federal lands can be included in the request for funds to administer and enforce the Federal lands cooperative agreement.

B. OSM will not pay expenses for litigation relating to Federal lands issues, which is the responsibility of the Department's Office of the Solicitor.