
CHAPTER 1-100
ACCOUNTING FOR CASH

1-100-00	Purpose
05	Background and Scope
10	Applicability
15	Payment Methods
20	Payment Policies
30	Responsibilities
40	Refunding Federal Funds

1-100-00 PURPOSE

- A. The purpose of this chapter is to prescribe the timing of cash advances to assure that cash withdrawals from the Treasury are essential for actual disbursements. Reference Treasury Department Circular 1075.
- B. This chapter explains the method used by OSM to account for cash received by a recipient or subrecipient under an OSM grant or cooperative agreement.

1-100-05 BACKGROUND AND SCOPE

- A. The acceptance of a grant or cooperative agreement from OSM creates a legal duty on the part of the recipient organization to use the funds or property made available in accordance with the terms and conditions of the grant or cooperative agreement. Payments may be made in advance of work performed or as a reimbursement for work performed or for costs incurred by the recipient.
- B. OSM has a reversionary interest in
1. the unused balance of payments;
 2. any funds improperly applied, whether received as an advance or reimbursable payment; and
 3. property acquired through the grant to which OSM specifically either retains title or reserves the right to require title transfer. (See chapter 1-410).

1-100-10 APPLICABILITY

The provisions of this chapter apply to each recipient of funds awarded under an OSM grant or cooperative agreement.

1-100-15 PAYMENT METHODS

Grant or cooperative agreement payments are made to recipients via electronic transfer of funds or payment by Treasury check. All grant recipients will use electronic transfer of funds as the method of payment unless otherwise allowed by DFM. The following definitions apply for the purposes of this chapter:

- A. **Electronic Transfer of Funds.** An on-line request for funds certified by a designated official of OSM. The transfer is accomplished by electronic means between the recipient, OSM, Treasury, and the recipient's bank. This transfer is irrevocable to the extent that the recipient has obligated funds in good faith thereunder for the execution of its authorized or approved OSM programs or projects.
- B. **Payment by Treasury Check.** Payment, advance or reimbursement, by Treasury check is made to a recipient with a Treasury check upon request from the recipient. Only in unusual circumstances and to recipients with whom OSM does not have a continuing relationship will payment by check be acceptable.

1-100-20 PAYMENT POLICIES

- A. **Timing of Payments.** Regardless of the particular method used, advances to a recipient shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the recipient in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as administratively feasible to actual disbursements for direct program costs and the proportionate share of allowable indirect costs.
- B. **Withholding Payments.** OSM reserves the right, upon written notice, to withhold future payments after a specified date if the recipient:
 - 1. Fails to comply with the terms and conditions of an OSM grant or cooperative agreement, including the reporting requirements; or

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2. Is indebted to the U.S. Government.
- C. Safeguarding Funds. In no case will OSM funds be commingled with the personal funds of, or be used for personal purposes by, any officer, employee or agent of the recipient; nor will any of these funds be deposited in personal bank accounts for disbursement by personal check.

1-100-30 RESPONSIBILITIES

- A. Recipients of OSM grants and cooperative agreements have the following responsibilities:
1. To draw Federal funds only at the time actually needed to make disbursements and to prevent withdrawals from exceeding the amount of the award.
 2. To submit to OSM all financial, performance and other prescribed reports required as a condition of the agreement.
 3. To impose the same standards of timing and amount upon any secondary recipient organizations.
 4. To adjust cash at the closeout of a grant or cooperative agreement by drawing funds to equal approved outlays or refunding to OSM cash that is in excess of approved outlays.
- B. The DFM has the following responsibilities:
1. To operate an electronic funds transfer system.
 2. To provide on-line access to paid drawdowns.
 3. To distribute monthly to the OSM FOs, AD-RRP, AD-SCs, and other appropriate OSM offices the Grant Detail Report, MB 214. The purpose of this report is to maintain a history of financial transactions for each open grant or cooperative agreement. This report provides OSM with the following information:
 - a. The amount awarded.

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- b. The amount of outlays which have been costed, i.e., reported on the SF 269, SF 269A or SF 271.
 - c. The uncosted draws, i.e., the difference between the cumulative draws and the costed funds.
 - d. The cumulative amount of drawdowns.
 - e. The individual draw amounts.
 - f. The amount of Federal funds available to be drawn.
- 4. To obligate OSM funds with grant or cooperative agreement documents.
 - 5. To record advances as outlays in OSM accounting records when the SF 269, SF 269A or SF 271 are received by OSM.
 - 6. To deobligate funds at close out.
 - 7. To reconcile cash with Treasury on a monthly basis.
- C. The FOs have the primary responsibility for monitoring the use of electronic funds transfer drawdowns by the recipients. This responsibility includes:
- 1. To review the recipient organization's use of funds.
 - a. The purposes of these reviews are to determine (a) the difference between the total amount of funds drawn and disbursements related to the Federal programs, and (b) that cash is being drawn only in accordance with program disbursement needs.

These reviews shall be conducted periodically, but not less frequently than quarterly, in accordance with Departmental Manual (339 DM 2).



**CHAPTER 1-102
DRAWDOWN EXPRESS (DDX)
PAYMENT AND PROCEDURES**

1-102-00	Purpose
1-102-10	Background
1-102-15	OSM Policy
1-102-15	Access to DDX
1-102-30	Required Forms

1-102-00 PURPOSE

The purpose of this chapter is to provide detailed instructions and guidance for the operation of DrawDown Express (DDX) for grantees to obtain grant funds.

1-102-10 BACKGROUND

- A. DDX is an electronic funds transfer system that utilizes the Department of the Treasury's Automated Clearinghouse (ACH) payment system to transfer funds from the Federal Reserve to the grantee financial institution. Requests are made directly from grantee via a communications link to OSM, Division of Financial Management (DFM).
- B. The recipient should request funds based on immediate disbursement requirements whenever possible to minimize Federal cash on hand. Contact OSM/DFM at 303-236-0343 for current timeframes for process and payment receipt.
- C. DDX will automatically pre-audit all requests for funds to ensure proper authority and correct data entry. This includes but is not limited to: limited access by DDX operators to grants only for their State/Tribe, limited draw capability by grant to the undrawn balance, agreement between subaccount numbers and grant numbers, cross check total amount of request with detail line items (previously third-party information). Acceptance of the request by the system does not automatically guarantee payment.

1-102-15 OSM POLICY

- A. FOs will monitor drawdowns to ensure that recipient organizations are maintaining minimal balances of Federal funds.
- B. Grantees are required to exercise sound accounting and cash controls. DFM may periodically require documentation from grantees pertaining to DDX operators, banking information, etc.
- C. Upon request of the FO, DFM will revoke or limit DDX capability to specific States/Tribes. This will only be done under unusual circumstances. DDX capabilities can be reinstated immediately upon the FOs request.

1-102-20 ACCESS TO DDX

- A. Unless otherwise allowed by DFM, all recipients will draw funds through DDX. It is the responsibility of the recipient to maintain all necessary hardware to access the DDX system. OSM will provide the communications software.
- B. In the event of hardware failure or other situations which may prevent a recipient from requesting funds through DDX, the following procedures should be followed:
 - 1. Contact DFM, Programmatic Accounting Section at 303-235-0343, to obtain permission to telefax request. Telefaxing will only be allowed for recipients who are already established on DDX.
 - 2. Complete request form (Appendix 113) and telefax to DFM. Request must be signed to be valid.
 - 3. Payment will be made by DFM in timeframes prescribed by DDX procedures.
- C. Payment by check (Chapter 1-100) is still allowed, but only in unusual circumstances and to recipients with whom OSM does not have a continuing relationship.
- D. There is no minimum for a request, except that the total amount of the request must be a positive amount. Amounts due OSM on grants may be made on DDX by indication of a negative draw, but positive draws on other grants or projects must also be made at the same time to keep the total request positive.

1-102-30 REQUIRED FORMS

- A. Each recipient must have on file with DFM a current ACH Vendor Express Form (Appendix 113). A new form must be submitted whenever the financial institution or grantee information changes. Payment cannot be made unless this form has been received by DFM.
- B. Each recipient is allowed up to two DDX Operators, designated through the form in Appendix 113. In the event of 1-102-20B, the authorizing signature on this DDX Operator form must appear on the telefax sheet. To change the authorizing agent, send a letter to DFM; include the agency name and address, the new authorizing agent, the signature of new agent and the reason for the change.
 - 1. When there is a change in operators, a new DDX Operator form must be completed. If there are already two operators, one of them must be removed on the same form the new operator is designated.
 - 2. DFM will confirm the information on the DDX Operator form and send a logon identification and passwords to the new operator via certified mail in a privacy envelope. At this point, the operator will be able to access the ABACIS Service Network, but he/she will not have

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the capability to request draws until the security notification contained in the privacy envelope has been signed and returned to DFM.

3. The DDX Operator is responsible for keeping his/her identification and passwords confidential and is responsible for any abuse of the system from his/her logon. If this information has been compromised, a new identification and passwords can be obtained by contacting DFM at 303-236-0343.
- C. Each State/Tribe must a signed copy of each request. A copy of each request should be made after it has been posted; the copy should be signed by both the DDX Operator and the Authorizing Official.



CHAPTER 1-120 AUDIT

1-120-00 Purpose

1-120-00 PURPOSE

The purpose of this chapter is to identify the DOI rule and the OSM directive which establish audit policies and procedures.

- o DOI regulation codified at 43 CFR Part 12, Subpart B, "Audit Requirements for State and Local Governments," establishes audit requirements for State and local governments that receive Federal financial assistance through DOI agencies, and defines the Department's responsibilities for implementing and monitoring those requirements.
- o OSM Directive AFC-2, "Audit Policy and Procedures Manual," provides comprehensive guidance concerning the audit resolution process.



CHAPTER 1-140
INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

1-140-00	Purpose
05	Background
10	Policy
15	Actions Requiring Review
20	Procedures for Use of State Process Review System
25	Procedures for Nonselected OSM Programs and States Without A Review Process

1-140-00 PURPOSE

Pursuant to Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," this chapter sets forth policy and required procedures for the intergovernmental review systems of States receiving Federal financial assistance from OSM.

1-140-05 BACKGROUND

- A. When proposed Federal financial assistance and direct development activities affect States, Federal agencies are required by law to provide State officials the opportunity to review and comment on those proposals and to consider their comments before making a final decision. Prior to E.O. 12372, the Federal government met these statutory requirements through OMB Circular A-95. Promulgated in 1969 and revised several times during the following decade, the Circular established federally-designed organizational and procedural requirements for States to follow in reviewing proposed Federal activities. On September 30, 1983, the intergovernmental review process of Circular A-95 was eliminated. The A-95 system has been replaced by E.O. 12372, which was issued July 14, 1982, and amended on April 8, 1983.
- B. On June 24, 1983, twenty-three Federal agencies published final rules to implement the E.O. The Department of the Interior (DOI) published its rule in 43 CFR Part 9, "Intergovernmental Review of Department of the Interior Programs and Activities." This rule is incorporated in Part 511 of the DOI Departmental Manual. In accordance with E.O. 12372, a State may establish an intergovernmental review system by an official act of the State followed by notification to OMB of such action. If OMB certifies that the system is in accordance with OMB directives, Federal agencies must utilize that system for reviews under applicable programs. OSM financial assistance programs are covered under E.O. 12372.

1-140-10 POLICY

- A. The intergovernmental review procedures must be in conformance with 43 CFR Part 9 and Part 511, Chapters 1 through 8, of the Departmental Manual, entitled "Coordination with State and Local Governments."

1-140-10 (Continued)

- B. OSM and the States applying for Federal financial assistance described in this Manual are covered by the procedures in this chapter.
- C. Indian tribal governments are excluded from these procedures.
- D. Emergency grants are exempt from these procedures.
- E. For OSM financial assistance programs, a State which has established an OMB sanctioned intergovernmental review system must specifically identify the program(s) for which it wishes to exercise E.O. 12372 review authority.
- G. AML Administrative and regulatory grant and cooperative agreement applications are considered continuation grants for the purposes of 43 CFR Part 9. AML Construction grant applications are considered new grants.

1-140-15 ACTIONS REQUIRING REVIEW

- A. Award of a grant or cooperative agreement.
- B. Monetary increase amendment to a grant or cooperative agreement.
- C. Scope change amendment to a grant or cooperative agreement.

1-140-20 PROCEDURES FOR USE OF STATE PROCESS REVIEW SYSTEM

- A. AML Administrative and regulatory grant and cooperative agreement applications must be submitted by the applicant to the State Single Point of Contact (SPOC) at least 30 days in advance of the final decision on funding. All other applications for OSM grants must be submitted by the applicant to the SPOC at least 60 days in advance of the final decision on funding.
- B. To assure proper timing of reviews by the SPOCs, the State should indicate under Type of Application (Item 8 on the SF 424) whether the application is for a continuation grant or a new grant.
- C. SPOCs must submit comments on applications directly to OSM. The applicant agency must provide OSM with copies of all comments which it receives or evidence that the SPOC was provided opportunity to comment on the proposal as mandated by the State's review procedure. This can be accomplished by completing Item 16a of the SF 424.

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- D. If OSM decides not to accept the recommendation (to deny funding or to modify the proposal) of a SPOC, it must provide the SPOC with a written explanation of the failure to accommodate at least ten days (plus five additional days to allow for receipt through the mail) in advance of carrying out OSM's decision to approve a proposal in accordance with Section 9.10 of 43 CFR. This will be handled by the appropriate AD-FO, with assistance from the FOD.
- E. In accordance with E.O. 12372 and the Department's regulations on implementation referred to in Section 9.12 of 43 CFR, States may simplify, consolidate or substitute federally required State plans. Prior approval by OSM is not required in order for a State to take advantage of this provision. The provision applies to the form in which the plans are presented, but not the content. This means that a plan may, as an example, show up as a chapter of a larger comprehensive plan covering housing, transportation, the State budget, etc. The information provided must, however, continue to meet existing OSM requirements for content.
- F. OSM must continue to assure that requirements of the National Environmental Policy Act (NEPA) are met. Under A-95, grant applications were reviewed by clearinghouses for environmental compliance. Such reviews may or may not be conducted by States under E.O. 12372-established review systems. Therefore, the State agency applicant early in the application process must determine if such a review should be conducted and determine, if needed, where the proposal should be forwarded in order for environmental requirements to be met. The Field Offices are responsible for assuring that this has occurred prior to any grant award. Detailed guidance on meeting environmental requirements as they relate to E.O. 12372 are contained in Chapter 7 of Part 511 of the Departmental Manual.

1-140-25 PROCEDURES FOR NONSELECTED OSM PROGRAMS AND STATES WITHOUT A REVIEW PROCESS

- A. For States with E.O. 12372 review mechanisms which have not selected any of the OSM grant programs for coverage, and for States that do not have a review system, the consultation provisions of the Intergovernmental Cooperation Act of 1968 prevail. The provisions require OSM to assume the responsibility of directly notifying affected State, area-wide and regional agencies, and local governments of proposed actions. The FO shall provide such notices of intent to affected agencies and local governments. Such notices should include a description of the proposed financial assistance (information contained on the SF 424), a timeframe for responding (at least 30 days for regulatory and AML administrative grants; 60 days for AML construction grants) and the name, address and phone number of the appropriate FO contact person.

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

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- B. In the absence of any official State process under E.O. 12372, OSM is required only to consider the recommendations of State agencies and officials; there is no "accommodate or explain" obligation.
- C. Where OSM decides not to accommodate recommendations on nonselected programs or from nonparticipating States, there is no requirement to provide those States with advance notice prior to taking action on a proposal.

CHAPTER 1-400 MATCHING AND COST SHARING

1-400-00	Purpose
10	Applicability
20	Basic Principles
30	Costs Borne by Federal Grants or Cooperative Agreements
40	Third Party In-Kind Contributions
50	Direct vs. Indirect Charges

1-400-00 PURPOSE

This chapter sets forth OSM policies on the allowability of contributions for satisfying matching or cost sharing requirements of OSM grants. The requirements for matching and cost sharing are outlined in the Grants Management Common Rule (43 CFR 12, Subpart C).

1-400-10 APPLICABILITY

This chapter applies to all OSM grants and cooperative agreements which require matching funds or cost sharing by the recipient.

1-400-20 BASIC PRINCIPLES

- A. Except as limited by paragraph 1-400-20C, matching and cost sharing requirements may be satisfied by (1) project or program related allowable costs incurred and financed by the recipient and/or (2) project or program related in-kind contributions made by third parties.
- B. Except as limited by paragraph 1-400-20C, allowable costs incurred by the recipient to satisfy matching or cost sharing requirements may be financed from any non-Federal source.
- C. Costs borne directly or indirectly by OSM under any Federal grant or contract (including any Federal grant or contract awarded to a third party) are not allowable for satisfying matching or cost sharing requirements of other Federal programs.
- D. Federal funds obtained under other grant programs may not be used to fulfill the matching requirement of any OSM grant, unless the funds are considered revenue sharing or come from block grants.

MATCHING AND COST SHARING

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1-400-20 (Continued)

- E. No contribution may be counted more than once as matching or cost sharing. However, when a contribution is related to two or more grants, it may be prorated among the grants or cooperative agreements involved.
- F. Costs and third party contributions to satisfy matching or cost sharing requirements must be verifiable from the records of the recipient.
- G. Costs financed by program income shall count towards satisfying the matching requirement of the Program Development and Administration and Enforcement grants.

1-400-30 COSTS BORNE BY FEDERAL GRANTS OR COOPERATIVE AGREEMENTS

- A. A cost shall be considered as borne by an OSM grant or cooperative agreement only when:
 - 1. The grant or cooperative agreement terms and conditions hold the recipient accountable for the use of the funds granted, and require the recipient to return or otherwise credit to OSM any payments received in excess of the Federal share of the allowable costs incurred; and
 - 2. The cost forms a part of the Federal share of the allowable costs of the grant-supported activity.
- B. A cost shall be considered as borne by an OSM contract only when:
 - 1. The cost is an allowable cost for which the contractor is entitled to payment under a Federal cost-type contract; or
 - 2. The cost is an allowable material cost for which the contractor is entitled to payment under a Federal time and material contract.

1-400-40 THIRD PARTY IN-KIND CONTRIBUTIONS

- A. Grantees must maintain records to show how the value placed on third party in-kind contributions was derived.
- B. A third party in-kind contribution counts towards satisfying a cost sharing or matching requirement only if the contribution was necessary to accomplish program activities and would be allowable if the grantee were required to pay for them.

1-400-40 (Continued)

- C. Some third party in-kind contributions are goods and services that, if the grantee had to pay for them, the payments would have been an indirect cost. Cost sharing or matching credit for such contributions shall be given only if the grantee has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.
- D. A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:
1. An increase in the services or property provided under the contract (without additional cost to the grantee) or
 2. A cost savings to the grantee.
- E. The value placed on third-party in-kind contributions for cost sharing or matching purposes shall conform to the requirements below.
1. *Volunteer services.* Services provided to a grantee by volunteers are valued at rates consistent with those paid by the grantee to its employees performing similar work. If the grantee does not have employees performing similar work, the applicable rates are those paid by other employers for similar work in the labor market in which the grantee competes for services. In either case, a reasonable amount of fringe benefits may be included in the valuation. Further, the quantity and allocability of volunteer services must be supported, to the extent feasible, by the same methods that the grantee uses for its own employees performing similar services. If, for instance, a grantee's employees use a time clock, volunteers performing similar work must do the same.
 2. *Employees of other organizations.* When an employer other than the grantee furnishes at no cost the services of an employee, these services are valued at the employee's regular rate of pay (exclusive of the employer's fringe benefits and overhead costs), provided they are in the same line of work for which the employee normally is paid. If these services are in a different line of work, then the rules for volunteer services apply. Therefore, if an engineer volunteers to conduct park tours on the weekends for a grant-supported program, his time would be valued at the rate of a tour guide, not an engineer. If on the other hand, he donates necessary engineering services to the project, his time would be valued at the rate of an engineer.

1-400-40E (Continued)

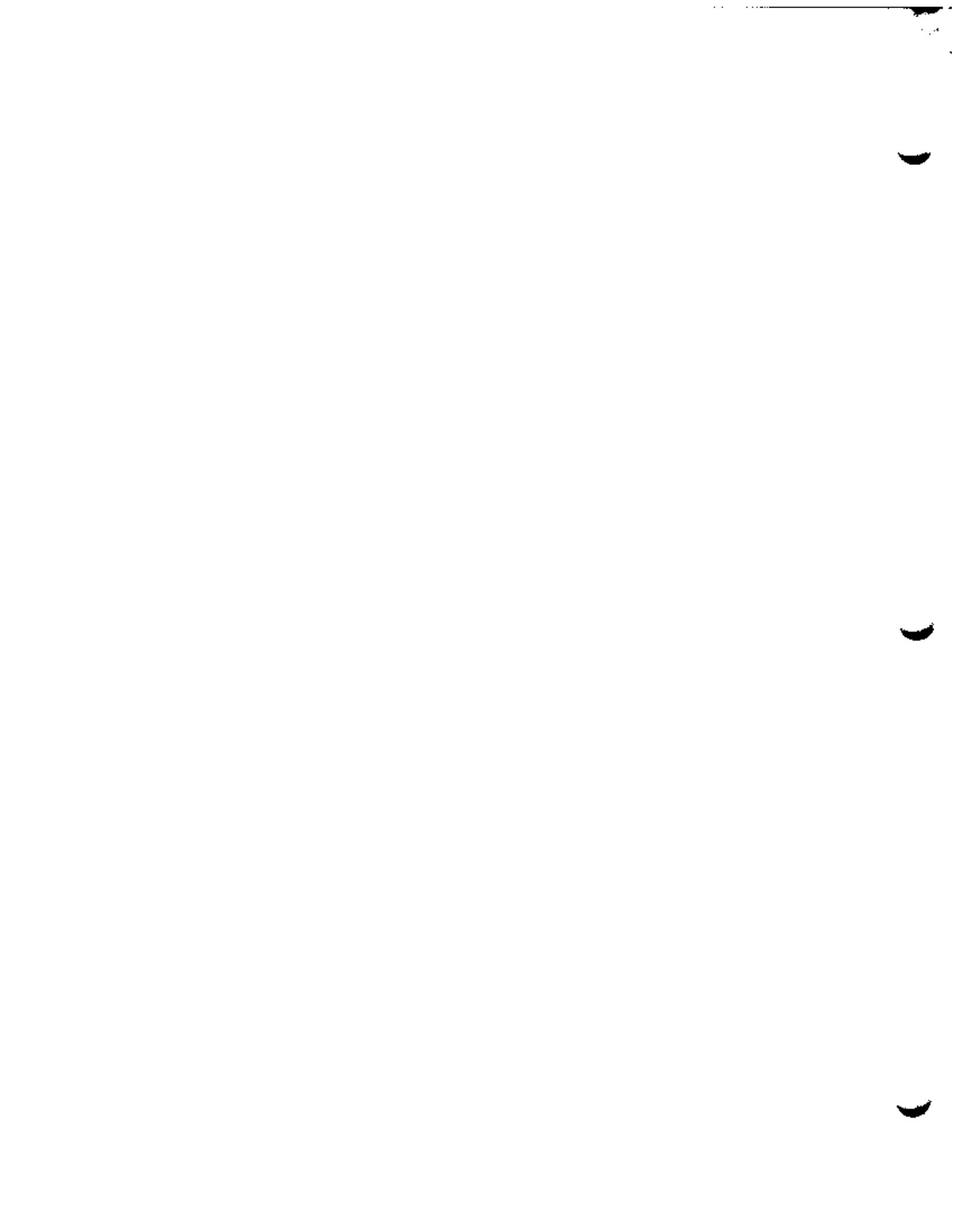
3. *Donated supplies and loaned equipment or space.* If a third party donates supplies, the contribution is valued at the market value of the supplies at the time of donation. If a third party donates the use of equipment or space in a building but retains title, the contribution is valued at the fair market rental value of the equipment or space.
4. *Donated equipment, buildings and land.* If a third party donates equipment, building or land, and the title passes to the grantee, the amount that is allowable for purposes of cost sharing or matching depends on whether the grant is for capital or operating expenditures.
 - a. If the purpose of the grant is to assist the grantee in acquiring equipment, buildings or land, the total market value of the property at the time of donation may be claimed.
 - b. If the purpose of the grant is to support activities that require the use of equipment:
 - (1) Depreciation or use allowances based on the market value of the donations are allowable costs incurred by the grantee. Such depreciation or use allowance is determined and allocated according to the applicable cost principles in the same manner as depreciation or use allowances for property purchased by the grantee, and therefore is usually treated as indirect costs; or
 - (2) If OSM approves, the fair rental rate of the donated land and the full market value of the equipment or buildings at the time it is donated may be considered cost-sharing or matching. Approval shall be given only if purchase of the equipment or building or actual rental of the land would have been approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as matching or cost-sharing.
5. *Donated real property for construction/acquisition.* If a grantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as matching or cost-sharing.

1-400-40E (Continued)

6. *Appraisal of real property.* In some cases, the market value of land or a building or the fair rental rate of land or space in a building must be determined. As a precondition to allowability for cost-sharing or matching purposes, OSM may require that the market value or fair rental rate be determined by a certified real property appraiser, and that the value or rate be certified by the responsible official of the grantee.

1-400-50 DIRECT VS. INDIRECT CHARGES

- A. The classification of a contributed cost as either direct or indirect must be consistent with the classification of similar items which the recipient charges to grant or cooperative agreement accounts. Thus, if items such as rent, utilities, accounting, executive salaries, etc., are treated as indirect in developing the recipient's indirect cost rate, then contributions in these categories may not be regarded as direct cost contributions to the grant-supported activity. Similarly, the use of facilities and equipment already owned by the recipient may not be counted as a direct cost contribution where the cost or value of such use is reflected in the applicable indirect cost rate as depreciation or use charges.
- B. If the recipient has established special or multiple indirect cost rates, the requirement for consistent classification of costs applies separately to the activities covered by each rate. For example, if "onsite" and "offsite" rates have been established, the costs of renting offsite facilities may be charged directly to offsite activities, even though analogous types of cost (e.g., depreciation and operation and maintenance expenses of onsite activities) are treated as indirect costs of onsite activities. OSM indirect cost rate negotiators will negotiate "offsite" or other special indirect cost rates with recipients only where justified in accordance with the applicable cost principles. Special indirect cost rates will not be established if the sole reason for the rate would be to reflect cost sharing or matching arrangements.
- C. When a recipient wishes to provide matching or cost sharing in the indirect cost category, he should merely reduce his charge to the grant or cooperative agreement account for the indirect costs to which he would otherwise be entitled. The amount of the reduction will count as matching or cost sharing. Where such reductions of indirect costs might appear to be inadvertent in financial reports submitted under the grant or cooperative agreement, OSM may request the recipient to include an explanation in the "Remarks" section of the report, showing that the claim for less than full allowable indirect costs is intentional.



CHAPTER 1-402
COMPLIANCE WITH TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

1-402-00	Purpose
02	Background
05	Applicability
10	Compliance Responsibilities

1-402-00 PURPOSE

This part is to advise recipients that Title VI of the Civil Rights Act of 1964, Nondiscrimination of Federally Assisted Programs, provides and requires that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

1-402-02 BACKGROUND

Executive Order 11246, (as amended by Executive Order 11375), Equal Employment Opportunity, requires that employees or applicants for employment not be discriminated against because of race, creed, color, sex or national origin and Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, requires nondiscrimination with respect to the handicapped in Federally-assisted programs.

1-402-05 APPLICABILITY

The provisions of Title VI, Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, as amended, together with the aforementioned Executive Orders apply to all recipients and applicants for financial assistance under programs administered by OSM.

1-402-10 COMPLIANCE RESPONSIBILITIES

A. Department of the Interior

The Office of Equal Opportunity (OEO) as authorized by the Secretary of the Interior shall assure that no person participating in a program funded in whole or in part by OSM is subjected to discrimination on the basis of race, color, national origin, sex or handicap condition. This shall be accomplished through continuing policy direction, oversight and compliance review of recipients and subrecipients together with the provisions of technical assistance and program evaluation.

COMPLIANCE WITH TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

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1-402-10 (Continued)

B. Office of Surface Mining Reclamation and Enforcement

OSM, as primary grantor of Federal funds, has direct responsibility for assuring that States, Tribal Agencies and subrecipients are in compliance with the provisions of Title VI, Civil Rights Act of 1964, Executive Order 11246 as amended, and Section 504 of the Rehabilitation Act of 1973.

CHAPTER 1-405
PROTECTION OF PROPERTIES LISTED IN THE
NATIONAL REGISTER OF HISTORIC PLACES

1-405-00	Purpose
10	Background
20	OSM Policy
30	Responsibilities of Recipients

1-405-00 PURPOSE

This chapter establishes procedures for considering the effects of undertakings authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) consistent with the purposes of the National Historic Preservation Act of 1966 (NHPA).

1-405-10 BACKGROUND

- A. Under section 101 of the NHPA, the Secretary of the Interior maintains a National Register of Historic Places composed of properties significant in American history, architecture, archeology, engineering and culture.
- B. The Director of OSM is required under section 106 of the NHPA to take into account the effect of any proposed OSM or OSM-assisted undertaking on properties listed in or eligible for the National Register. The Director is also required to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertaking. These responsibilities are not delegable to grant recipients.
- C. As stated in the standard assurances for nonconstruction and construction programs (Item 13, on SF 424B and Item 17, on SF 424D), the recipient "Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)"
- D. Specific requirements for the consideration of historic properties are also found in SMCRA and implementing regulations at 30 CFR 731, 732, 761, 772, 773, 779, 780, 783, and 784 (see 52 FR 4244-4263; February 10, 1987).

PROTECTION OF PROPERTIES LISTED IN THE
NATIONAL REGISTER OF HISTORIC PLACES

PAGE 2

1-405-20 OSM POLICY

- A. It is the policy of OSM that, in cases of a proposed OSM or OSM-assisted undertaking that affects National Register listed or eligible properties, the procedures followed by OSM comply with section 106 of NHPA and conform to the regulations of the ACHP at 36 CFR Part 800. The requirements of SMCRA and Implementing regulations concerning the considerations of historic properties shall also be met.
- B. For grant projects funded under Title IV of SMCRA, the appropriate OSM FO must assure that appropriate consideration is given to the protection of historic properties as required by NHPA and its implementing regulations at 36 CFR 800.
- C. Under Title V of SMCRA, OSM FOs should ensure that grantees are assisting with the implementing of section 106 requirements by:
 - 1. Giving appropriate consideration to historic properties during the conduct of any activities carried out under the terms of the Title V grant, and
 - 2. Consulting with the SHPO concerning such properties.
- D. Additional information can be found in OSM Directive TSR-7, "Protecting Historic Properties," Issued December 18, 1987, and in its attachment "Technical Considerations for the Implementation of Historic Property Regulations."

1-405-30 RESPONSIBILITIES OF RECIPIENTS

- A. Grantees are responsible for assisting OSM in fulfilling its NHPA section 106 responsibilities by ensuring that historic properties receive appropriate consideration during the conduct of activities carried out by the grantee under the provisions of the grant, and by consulting with the SHPO concerning such properties.
- B. Grantees are also responsible for fulfilling requirements of SMCRA, Implemented by regulations enumerated in 1-405-10.C.

CHAPTER 1-406
COMPLIANCE WITH OTHER PERMIT REQUIREMENTS

1-406-00	Purpose
05	Policy
10	List of Laws, Regulations and Treaties

1-406-00 PURPOSE

This chapter sets forth other laws, regulations, and treaties that are to be complied with.

1-406-05 POLICY

For construction activities, prior to the beginning of construction, all applicable Federal permits shall be obtained and all Federal laws, regulations and treaties that would effect the construction activity shall be complied with.

1-406-10 LIST OF FEDERAL LAWS, REGULATIONS AND TREATIES

The list of Federal Laws, regulations, and treaties includes:

- A. Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. 1151-1175).
- B. Clean Air Act, as amended (42 U.S.C. 1857 et. seq.)
- C. Solid Waste Disposal Act (42 U.S.C. 3251-3259).
- D. Refuse Act of 1899 (33 U.S.C. 407).
- E. Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661-666c).
- F. Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et. seq.).
- G. Clean Water Act, as amended (33 U.S.C. 1251 et. seq.).
- H. Rivers and Harbors Act of 1899 (33 U.S.C. 401 et. seq.).
- I. Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).
- J. Fish and Wildlife Act of 1956 (16 U.S.C. 742a et. seq.).

COMPLIANCE WITH OTHER PERMIT REQUIREMENTS

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1-406-10 (Continued)

- K. Endangered Species Act (16 U.S.C. 1531 et. seq.).
- L. Wild and Scenic Rivers Act (16 U.S.C. 1278 et. seq.).
- M. International Migratory Bird and Waterfowl Treaties.
- N. Regulatory Program Regulations of the Corps of Engineers, 47 FR 31795 et. seq., July 22, 1982 (33 CFR 320-330).

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CHAPTER 1-410
PROPERTY ACQUIRED UNDER OSM GRANTS AND COOPERATIVE AGREEMENTS

1-410-00	Purpose
10	OSM Policy
20	Applicability
30	Real Property
40	Equipment
50	Supplies

1-410-00 PURPOSE

- A. The purpose of this chapter is to provide OSM policy and procedures for the use, management and disposition of real property, equipment and supplies purchased under an OSM grant or cooperative agreement.
- B. The requirements for use, management and disposal of real property, supplies and equipment purchased under a grant approved after October 1, 1988 are established in the Grants Management Common Rule (codified by the Department of the Interior at 43 CFR 12, Subpart C).

1-410-10 OSM POLICY

In addition to the Grants Management Common Rule requirements, the following OSM policies are provided for equipment:

- A. Except as noted in 1-410-10C, a State will use, manage, and dispose of equipment under a grant in accordance with State laws and procedures.
- B. Except as noted in 1-410-10C, other grantees and subgrantees will follow Federal requirements outlined in the Grants Management Common Rule and 1-410-40B.3.
- C. The signing of a grant sets up a legal, binding relationship between the grantor and grantee. The basis of this relationship is the terms and conditions outlined or referenced in the approved agreement. Among other items, the parameters surrounding the purchase, use, and disposal of equipment are set at the time of signing the grant. Therefore, for equipment purchased under a grant approved prior to the implementation of the Common Rule (October 1, 1988), equipment accountability and disposal will be in accordance with policies in effect at the time and outlined in 1-410-40A.

1-410-20 APPLICABILITY

This chapter is applicable to all real property, equipment and supplies acquired under OSM grants and cooperative agreements.

1-410-30 REAL PROPERTY**A. Land Acquisition.**

1. OSM grant or cooperative funds may be used for land acquisition only when specifically authorized.
2. AMLR funds may used for land acquisition when lands are purchased in accordance with the limited acquisition purposes set forth in sections 407 and 409 of SMCRA., appropriate regulations at 30 CFR 879 and the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970. The authorization is limited to acquisition of those lands required for reclamation work and on which permanent facilities will be constructed, or for coal refuse disposal sites which will serve the purpose of the title.

B. Acquisition of Other Real Property

1. Title. Title to and accountability for real property shall vest in the grantee subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

B. Use. Grantees shall use real property acquired in whole or in part with OSM funds for the authorized purpose of the original grant as long as needed, whether or not the program or project continues to be supported by Federal funds.

C. Disposition. When real property is no longer needed for the originally authorized purpose, the grantee shall request disposition instructions from OSM. OSM shall provide disposition instructions in accordance with one of the following options:

1. Retention of Title. Retain title after compensating OSM. The amount paid to OSM will be computed by applying OSM's percentage of participation in the cost of the original purchase to the fair market value of the property.

1-410-30C (Continued)

2. Sale of Real Property.

- a. Sell the property and compensate OSM. The amount due OSM will be calculated by applying OSM's percentage of participation in the cost of the original purchase to the proceeds of the sale of the property, after deducting any actual and reasonable selling and fixing-up expenses.
- b. When a grantee is directed to sell real property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

3. Transfer of Real Property. Transfer title to OSM or a third-party designated/approved by OSM. The grantee shall be paid an amount calculated by applying the grantee's percent of participation in the purchase of the real property to the current fair market value of the property.

1-410-40 EQUIPMENTA. Pre-October 1988 Equipment

1. Definition. For equipment purchased under a grant approved prior to October 1, 1988, the definition of equipment (nonexpendable personal property) is tangible, personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. *A recipient may use its own definition of equipment provided that such definition would at least include all equipment as defined above.*
2. Title. Title to equipment acquired under a grant will vest upon acquisition in the grantee, subject to the use, right to transfer title and disposition restrictions outlined in 1-410-40A.3., 4. and 5. below.
3. Use. The grantee shall use the property in the grant-supported program or project as long as there is a need for the property to accomplish the purpose of that program/project, whether or not the program/project continues to be supported by Federal funds. When no longer needed for the original program/project, the grantee shall use the property in connection with its other federally-sponsored activities, in the following order of priority:
 - a. For other OSM-sponsored activities.
 - b. For activities sponsored by other Federal agencies.

1-410-40A. (Continued)

4. **Right to Transfer Title.** When OSM determines that equipment with an acquisition cost of \$1,000 or more is unique, difficult or costly to replace, OSM will reserve the right to require the recipient to transfer the equipment to the control of OSM or directly to a third party named by OSM when such third party is otherwise eligible under existing regulations. Such reservations shall be subject to the following standards:
 - a. The equipment shall be appropriately identified in the OSM grant agreement or otherwise made known to the recipient.
 - b. OSM shall issue disposition instructions within 120 calendar days after the end of the OSM support of the project for which it was acquired.

5. **Disposition.** When the grantee no longer needs the property as provided in 1-410-40A.3 above, the property may be used for other activities in accordance with the following standards:
 - a. Nonexpendable property with a unit acquisition cost of less than \$1,000 may be used for other activities without reimbursement to OSM. The property may also be sold and the proceeds retained by the grantee.
 - b. Nonexpendable personal property with a unit acquisition cost of \$1,000 or more may be retained for other uses provided that compensation is made to OSM. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original program or project to the current fair market value of the property.
 - c. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from OSM. Disposition will be in accordance with the following procedures:
 - (1) The recipient shall prepare and submit to the FOD the Form OSM-60 and a letter requesting disposition instructions for the equipment.
 - (2) The FOD shall provide the final disposition instructions in accordance with the following options:

1-410-40A.5.c.(2) (Continued)

- (a) Instruct the grantee to sell the equipment and compensate OSM. The amount due OSM will be calculated by applying OSM's percentage of participation in the cost of the original purchase to the proceeds of the sale of the property, after deducting \$100 or 10 percent of the proceeds (whichever is greater) for selling and handling expenses.

When a grantee is directed to sell equipment, the sale must occur through the grantee's established sale or auction procedures.

- (b) If the grantee does not wish to dispose of the equipment or does not have an established sale/auction procedure, the FOD shall instruct the grantee to transfer the title and ship the equipment to OSM or a third-party designated/approved by OSM. The grantee shall be paid an amount calculated by applying the grantee's percent of participation in the purchase of the property to the current fair market value of the property.

B. Post-October Equipment

1. **Definition.** For equipment purchased under a grant approved after October 1, 1988, the definition of equipment (nonexpendable personal property) is tangible, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. *A recipient may use its own definition of equipment provided that such definition would at least include all equipment as defined above.*
2. **Title.** Title to equipment acquired under a grant will vest upon acquisition in the grantee, subject to the obligations and conditions set forth below.
3. **Use, Management and Disposition Requirements**
 - a. A State will use, manage and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Each State shall provide copies of the applicable laws and procedures to the appropriate FOD.
 - b. Other grantees will follow the requirements outlined below.
 - (1) **Use.**

1-410-40B.3.b(1) (Continued)

- (a) Equipment shall be used by the grantee in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
 - (b) The grantee shall also make equipment available for use on other programs or projects currently or previously supported by the Federal Government, providing such use will not interfere with the work on the program or projects for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by OSM. User fees should be considered, if appropriate.
 - (c) The grantee shall not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.
- (2) Management Requirements. Procedures for managing equipment shall, at a minimum, meet the following requirements:
- (a) Property records must be maintained that include:
 - (i) A description of the property;
 - (ii) A serial number or other identification number;
 - (iii) The source of the property;
 - (iv) Who holds title;
 - (v) The acquisition date;
 - (vi) The cost of the property;
 - (vii) Percentage of Federal participation in the cost of the property;
 - (viii) The location, use and condition of the property; and
 - (ix) Any ultimate disposition data including the date of disposal and the sale price of the property.

1-410-40B.3.b(2) (Continued)

- (b) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years. A copy of the results of the physical inventory and reconciliation shall be provided to the FOD.
 - (c) A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage or theft shall be investigated and the results of the investigation provided to the FOD.
 - (d) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (e) If authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (3) Disposition. When original or replacement equipment acquired under a grant is no longer needed for the original program or project or for other activities currently or previously supported by OSM, the grantee shall inform OSM of the disposition action it will take as follows:
- (a) Items of equipment with a current per unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to OSM.
 - (b) Items of equipment with a current per unit fair market value of \$5,000 or more may be retained or sold after compensating OSM. The amount paid to OSM shall be computed by applying OSM's percentage of participation in the cost of the original purchase to the current fair market value of the equipment.
 - (c) If the grantee fails to take the appropriate disposition actions, OSM may direct the grantee to take the disposition actions.

1-410-40 (Continued)

- C. Federally-Owned Equipment. If a grantee is provided Federally-owned equipment:
1. Title will remain vested in the Federal Government.
 2. Grantees will manage the equipment in accordance with the requirements outlined in 1-410-40.B.3(2).
 3. Grantees will submit an annual inventory listing. This inventory listing will be submitted to the FOD using the OSM 60 form.
 4. When the equipment is no longer needed, the grantee will request disposition instructions from OSM.
- D. Right to Transfer Title. OSM reserves the right to transfer title of any grant-acquired equipment to the Federal Government or a third party named by OSM. Such transfers shall be subject to the following requirements:
1. The specific piece of property shall be identified in writing to the grantee. This notification shall be made by the FOD as soon as possible after approval is given to purchase the equipment, in order to facilitate the incorporation of this restriction into the grantee's property management system.
 2. OSM shall issue disposition instructions within 120 calendar days after the end of the grant in which the equipment was acquired. If OSM fails to issue disposition instructions, the grantee shall follow normal disposition procedures.
 3. When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.
- E. Replacement of Property. When an item of nonexpendable personal property is no longer efficient or serviceable, but the recipient continues to need the property, the recipient may replace the property through trade-in or sale and purchase of new property, provided the following requirements are met:
1. The replacement property must serve the same function as the original property, although not necessarily of the same grade or quality.

1-410-40E (Continued)

2. Value credited for the property, if the property is traded in, must be related to its fair market value.
3. The sale of the property and purchase of its replacement shall occur close enough in time to show that the two events are related. However, purchase of the replacement property may occur prior to trade-in or sale of the original property.
4. Replacement of property under this program is not a disposition of such property. The recipient is not required, at the time of replacement, to compensate OSM for the Federal share of the property. Rather, the Federal share shall be transferred to the replacement property with an appropriate adjustment as provided in 5. below.
5. The Federal share of the replacement property shall be calculated as follows:
 - a. The proceeds from the sale of the original property or the amount credited for trade-in shall be multiplied by the Federal share in the property (percentage) to produce a dollar amount.
 - b. The dollar amount shall be used to reduce the Federal portion of the cost of the replacement. Any excess proceeds over the Federal portion of the cost of the replacement shall be used to reduce the Federal share of the grant or returned to OSM by check.

1-410-50 SUPPLIES

- A. Title to supplies acquired under a grant will vest, upon acquisition, in the grantee.
- B. Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally-sponsored programs or projects, the grantee shall compensate OSM for its share. The amount paid to OSM shall be computed by applying OSM's percentage of participation in the cost of the original purchase to the current fair market value of the supplies.
- C. Grantees shall purchase supplies only in amounts reasonably expected to be required for the OSM-funded grant or cooperative agreement. The supplies should be procured on a timely basis to reflect expected utilization during the period of grant support. Although there is no requirement for accountability for supplies similar to that of equipment, the grantee is expected to maintain those records necessary to support the purchase, receipt, proper charging and use of supplies in accordance with good management practices.



**CHAPTER 1-420
PROGRAM INCOME**

1-420-00	Purpose
10	Background
20	OSM Policy
30	Records

1-420-00 PURPOSE

- A. This chapter outlines OSM policies on the disposition of program income generated by OSM grant or cooperative agreement related activities.
- B. The requirements for program income are outlined in the Grants Management Common Rule (43 CFR 12, Subpart C).

1-420-10 BACKGROUND

- A. Grantees are encouraged to earn income to defray program costs. Such income may result from activities integrally related to the grant or cooperative agreement or from activities which are only incidental to the main purpose of the grant. Income may accrue from activities of the recipient organization or from services provided by an individual performing under the grant or cooperative agreement. It may result from grant or cooperative agreement supported activities which are intended to become self-supporting in the future, as well as from activities which are not so intended.
- B. Examples of income resulting from grant or cooperative agreement supported activities are listed below, but are not to be considered all-inclusive:
 - 1. Sale of products, e.g., publications.
 - 2. Fees for services performed and fees for the sale of services, e.g., the sale of computer time.
 - 3. Rental of real or personal property acquired with OSM grant funds.
 - 4. Income received from permit fees.

PROGRAM INCOME

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1-420-10B (Continued)

5. Revenue from the sale of land or surplus property.
 6. Insurance premiums received under the Subsidence Insurance grant.
- C. Income from fines, penalties and forfeitures collected by the recipient would not be considered as Program Income. Such receipts should be held by the State to further the improvement in quality of life and environmental activities in the State.

1-420-20 OSM POLICY

A. General

1. The recipient is accountable to OSM for the gross income received by the grantee directly generated by a grant supported activity, or earned only as a result of the grant agreement, during the grant period. That accountability may be satisfied by disposition in accordance with one of the following:
 - a. Program Income from all sources must be reported. Records of grant and cooperative agreement related income are to be kept in the same manner as required for funds provided by the grant or cooperative agreement.
 - b. Program income funds are to be used to further the purposes of the grant or cooperative agreement program for which the award was made; provided, however, that no unallowable costs such as entertainment or interest costs may be defrayed by the program income funds.
2. Proceeds from the sale of real and personal property, either provided by OSM or purchased in whole or in part with Federal funds, shall be handled in accordance with FAM Chapter 1-410.
3. Any program income which exceeds the State's share of project costs will be deducted from the Federal share.
4. Applicable credits are not grant or cooperative agreement related income but rather reductions of expense. The Federal share of such credits shall be applied to reduce the portion of the expense chargeable to the grant.

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1-420-20A (Continued)

5. Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant shall not be treated as grant or cooperative agreement related income.
6. Program Income shall be used for current costs and disposition shall be in accordance with B and C below, unless a specific different provision is made in the grant or cooperative agreement award. The Federal Assistance unit shall ensure that the recipient is advised of the requirements for disposition of income at the time of grant or cooperative agreement award, either by inclusion in the terms of award or by such other means as it deems appropriate.

B. OSM Policy for Disposition of Income Earned on a Title V (Regulatory) Grant or Cooperative Agreement.

1. For grants with a cost sharing or matching requirement (i.e., OSM funds only a portion of the total program cost), the grantee shall use the income to meet the grantee's cost sharing or matching requirement of the grant agreement (cost sharing option).
2. For grants with no cost sharing or matching requirement (i.e., OSM funds the total program cost), the income earned shall be deducted from the total allowable costs to determine OSM's net costs (deductive option).
3. When a grant includes activities/functions with different matching requirements, the income earned shall be disposed of in accordance with the percentage used in the grant application to determine the final grant amount.

In the case of an A&E grant (50/50 matching requirement) which also includes Federal lands activities (100% OSM funded), at the time of application, the grantee shall determine and justify the percent of the total grant request which will be used to fund the A&E and the Federal lands portions of the grant. That percentage will be used throughout the grant period to determine the portion of the program income to be applied to the A&E and the Federal lands portions of the grant.

1-420-20B (Continued)

4. For income resulting from permit fees paid to the State by coal mine operators, the State at its option may either report all of the fee it received or equally distribute the fee income to its share of the regulatory grants in effect during the approved permit time period. As an example of the latter case, if a permit was issued in May 1989, for a 5-year period and a permit fee of \$500,000 was paid to the State at the time of permit issuance, the income could be evenly distributed and reported on the regulatory grants that covered the period May 1989 to May 1994.
5. Notwithstanding the treatment provided for in the preceding subsection, the guiding principle is that, considering all sources of funds accruing to the grantee as a result of the regulatory grant (Federal grant funds, permit fees, etc.), the grantee shall not realize a "profit" by receiving more income than its share for operating the regulatory program during the period of the grant or funding cooperative agreement.

C. OSM Policy for Disposition of Income Earned on a Title IV (AML) Grant or Cooperative Agreement.

1. Program income includes any user charge imposed on or for land reclaimed pursuant to Title IV of SMCRA, after expenditures for maintenance have been deducted.
2. Donations by persons, corporations, associations and foundations for the purpose of this title shall be accounted for.
3. Except as noted in 4. below, income earned on AML grants and cooperative agreements shall be deducted from the total allowable costs to determine OSM's net costs (deductive option).
4. The objectives of the Subsidence Insurance Grant are to establish, administer and operate a self-sustaining, individual grantee administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining. Insurance premiums collected under the grant shall be added to the funds committed to the grant by OSM and used to further eligible subsidence insurance program objectives (additive option). Insurance premiums shall be considered disbursed as soon as the grantee determines how the funds will be used to further the objectives of the grant.

1-420-30

RECORDS

Adequate financial records of program income receipt and disposition must be maintained in order that such income may be tracked and audited.



CHAPTER 1-430
TRANSFERRING WORK AND PROVIDING FINANCIAL ASSISTANCE TO THIRD
PARTIES UNDER OSM FEDERAL ASSISTANCE PROGRAMS

1-430-00	Purpose
02	Applicability
05	Background
10	Approval Principles

1-430-00 **PURPOSE**

This chapter contains principles to be followed by OSM in exercising its prior approval authority before recipients and subrecipients transfer work or provide financial assistance to third parties under OSM Federal assistance programs. The specific purpose is to ensure that OSM requires the recipient to perform a substantive role in carrying out project or grant activities and not act as a straw party. These principles apply to the approval given by OSM for a project plan in an application. Reference P.L. 95-224 and the Grants Management Common Rule, 43 CFR 12, Subpart C.

1-430-02 **APPLICABILITY**

This chapter applies to all OSM grants and cooperative agreements.

1-430-05 **BACKGROUND**

OSM requires recipients and subrecipients of grants and cooperative agreements to obtain prior approval for transferring to a third party, by contracting or other means, the actual performance of substantive programmatic work. It also requires them to obtain approval before providing financial assistance to a third party by subgranting or other means. In either case, recipients must obtain the prior approval of OSM, and subrecipients must obtain the prior approval of the party awarding the subgrant. If the transfer or financial assistance is not included in the approved project plan at time of award, the approval must be obtained through a post-award request.

**TRANSFERRING WORK AND PROVIDING FINANCIAL ASSISTANCE TO THIRD
PARTIES UNDER OSM FEDERAL ASSISTANCE PROGRAMS**

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1-430-10 APPROVAL PRINCIPLES

- A.** OSM may authorize a recipient to transfer substantive programmatic work or to award financial assistance only if, despite the transfer or financial assistance, the recipient will perform at least one of the following roles:
1. Principal performer of project activities;
 2. Primary beneficiary of Federal financial assistance; or
 3. Overall administrator of a program in which third parties perform activities or receive financial assistance.
- B.** Generally, each application or request involving the transfer of work or the award of financial assistance shall be reviewed on its own merits as to whether approval would violate the rule in paragraph 1-430-10A. However, if the transfer or financial assistance falls into one of the following classes, OSM may assume that approval would not violate the rule:
1. The procurement of construction services under a construction grant or cooperative agreement or under the construction portion of a grant or cooperative agreement for both construction and nonconstruction. Construction, as used here, means also alteration or renovation of real property.
 2. Subgranting or contracting for projects by a recipient under a grant or cooperative agreement awarded under a statute or regulation explicitly intending that the primary responsibility of each recipient shall be to select projects for support and to award and administer grants, contracts or cooperative agreements for those projects.
 3. The transfer of activities and funds to a collaborating or cooperating organization in a grant or cooperative agreement awarded under a statute or regulation explicitly intending such collaboration or cooperation.
 4. The transfer of activities and funds to a college, university, hospital, or government entity from a closely affiliated but separately incorporated organization having for a primary purpose the receipt and administration of gifts, grants, cooperative agreements and contracts. An example is the transfer of funds to a State university from its affiliated research foundation.

**TRANSFERRING WORK AND PROVIDING FINANCIAL ASSISTANCE TO THIRD
PARTIES UNDER OSM FEDERAL ASSISTANCE PROGRAMS**

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1-430-10 (Continued)

- C. Procurement contracts are often the means by which the recipient transfers programmatic work to a third party. In such cases, OSM may not require the recipient to submit the contract document for prior approval if that requirement would be an unauthorized deviation of the Grants Management Common Rule.

- D. OSM may limit the kinds of third parties eligible to perform the work or receive the financial assistance. However, OSM may not itself choose a party and directly or indirectly require the recipient to transfer the work or award the assistance to the party. The choice of a specific party must be the recipient's.



CHAPTER 1-465
REDUCTION, SUSPENSION AND TERMINATION OF
GRANTS AND COOPERATIVE AGREEMENTS

1-465-00	Purpose
05	Applicability
10	Definitions
15	Suspension for Cause
20	Termination for Cause
25	Termination for Convenience
30	Procedures for Suspension of Payments
35	Procedures for Reduction, Suspension and Termination of Grants

1-465-00 PURPOSE

This chapter prescribes procedures for suspension of payments and reduction, suspension and termination of grants and cooperative agreements. Reference 43 CFR 12.

1-465-05 APPLICABILITY

The actions outlined in this chapter are pertinent to individual grant payments and awards. See chapter 1-500 for debarment or suspension of a grantee.

1-465-10 DEFINITIONS

For the purposes of this chapter, the following definitions are provided:

- A. Suspension - an action by OSM that either temporarily withholds payments under an agreement or temporarily interrupts Federal assistance pending corrective action by the recipient or pending a decision by OSM to terminate the grant/cooperative agreement.
- B. Termination - the withdrawal of support through the cancellation of Federal assistance in whole or in part any time prior to the date of completion of the grant/cooperative agreement.

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1-465-15 SUSPENSION FOR CAUSE

- A. When a recipient materially fails to comply with the terms and conditions of an award and does not appear to be taking steps to resolve the problem, OSM may, after reasonable notice to the grantee, take one or more of the following actions:
1. Temporarily withhold payments under an award pending resolution of the issue or correction of the deficiency by the grantee;
 2. Disallow both the use of funds and the matching credit for all or part of the cost of the activity or action not in compliance;
 3. Suspend or terminate the current award, in whole or in part; or
 4. Withhold further awards for the program.
- B. Costs incurred and payments withheld during the period of the suspension of payments under an award shall be allowed and paid when the issue has been resolved or the deficiency corrected.
- C. No obligations incurred by the grantee during the period of suspension of the grant shall be allowed under the suspended grant/cooperative agreement. The suspension shall remain in effect until the grantee has taken corrective action.

1-465-20 TERMINATION FOR CAUSE

OSM may terminate a grant/cooperative agreement in whole or in part any time before the date of completion: (a) if it has been determined that the grantee has failed to comply with the terms and conditions of the grant/cooperative agreement and resolution does not seem probable; (b) if approval of all or part of the State's approved program is withdrawn; or (c) if Federal enforcement is substituted for all or part of the State program.

1-465-25 TERMINATION FOR CONVENIENCE

- A. OSM or the recipient may terminate a grant/cooperative agreement in whole or in part when both parties agree that the continuation of the project or program would not produce beneficial results commensurate with the further expenditure of funds.