

**U.S. Department of the Interior**  
**Office of Surface Mining Reclamation and Enforcement**

**Appendix A**



**Federal Financial Assistance Manual**  
**October 2024**

# Introduction

The *Office of Surface Mining Reclamation and Enforcement Federal Financial Assistance Manual* (OSMRE-FFAM) provides the Office of Surface Mining Reclamation and Enforcement (OSMRE) and non-federal entities with a single document that aggregates and restates the requirements that serve as the overarching directive to all OSMRE financial assistance awards. This manual incorporates the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended, P.L. 95-87, and every other relevant statutes, and applies to both recipients and subrecipients of OSMRE financial assistance awards unless otherwise specified by regulation or the legally binding terms and conditions of the specific OSMRE award.

This document is also designed to be useful to those interested in OSMRE financial assistance awards by providing information about OSMRE, its organization, its staff, and its award process. The FFAM is available [online](#). This version includes links within the document as well as links to some web resources outside of this document. Users are strongly encouraged to use the online version of this document to access the most up to date information.

## OSMRE-FFAM ORGANIZATION

The OSMRE-FFAM has alphanumeric *Annex and Exhibit* sections, which allow general information, application information, and other types of reference material to be separated from legally binding terms and conditions.

The *Annex* sections contain a table of contents and a glossary which defines commonly used terms and abbreviations used throughout the document. The goal of the Annexes are to: describe OSMRE and its relationship to other organizations within the Department of the Interior (DOI); specify the responsibilities of the recipient, OSMRE, and other DOI staff, and outline the financial assistance application and review processes to award an agreement if the application is approved. The Annex sections also specify the purpose, approach, and need for assistance, its objectives, as well as the results and benefits expected under each OSMRE financial assistance program.

- **ANNEX A: Table of Contents**
- **ANNEX B: Definitions**
- **ANNEX C: Acronyms, Abbreviations, and Initialisms**
- **ANNEX D-I FFAM Program/Chapter Descriptions:**
  - **Part I:** Requirements for All OSMRE Assistance Agreements. Part I (chapter 1-100 to 1-180)
  - **Part II:** General Requirements for Financial Assistance. Part II (chapter 2-100 to 2-280)
  - **Part III:** Allowable Costs. Part III (chapter 3-100 to 3-120)
  - **Part IV:** Abandoned Mine Lands (AML) Grant Programs. Part IV (chapter 4-100 to 4-700).
  - **Part V:** Regulatory Grant Program. Part V (chapter 5-100 to 5-240)
  - **Part VI:** Cooperative Agreement Programs. Part VI (chapter 6-100 to 6-140)

The *Exhibit* sections contain examples of forms, memos, and documents that pertain to the requirements of specific applications and awards, such as Regulatory (Title V), Bipartisan Infrastructure Law (BIL),

Abandoned Mine Land (AML) grants and cooperative agreement programs to include: the Watershed Cooperative Agreement Program (WCAP), Mine Drainage Technology Initiative (MDTI), Applied Science, Passive Treatment Protection Program (PTPP) and Youth Program.

## CONVENTIONS

Certain conventions are followed throughout this document. The term "financial assistance" refers to both grants and cooperative agreements; however, for clarity, certain sections mention both grants and cooperative agreements. The term "recipient" refers to recipients of financial assistance. "OSMRE" refers to the entire bureau within the Department of the Interior. The phrase "awarding office" refers to the OSMRE regional office that awards and oversees the lifecycle of the financial assistance agreement.

OSMRE policy directive GMT-10 establishes this manual as the policy and procedural guidance for financial assistance. While the manual format was selected to promote usability, this manual represents OSMRE policy and high-level procedures surrounding the topic of financial assistance. When referencing the FFAM, OSMRE may use either "this manual" or "this directive" interchangeably because the manual serves as the policy procedural content for the directive.

## SUPERSESSION

In previous issuances of directive GMT-10, this manual was titled *Federal Assistance Manual* and in this reissuance the name has been adjusted to *Federal Financial Assistance Manual* to promote compliance with 2 CFR 200 terminology. This revision is an update of the August 2021 publication. It applies to all OSMRE financial assistance awards for budget periods after the issuance of this directive. This version incorporates new and modified requirements, clarifies certain policies, and implements changes in statutes, regulations, and policies that have become effective since the previous version issued August 2021.

## ADDITIONAL INFORMATION

The Program Support Directorate (PSD), Division of Financial Assistance (DFA) develops and maintains this document. Changes in policy that take effect before the next major revision of the OSMRE-FFAM will be provided electronically on OSMRE.gov as interim policy memoranda. Recipients are responsible for reviewing the online FFAM page on OSMRE.gov for changes and for implementing them, as appropriate. Non-policy altering administrative updates such as changes to contact information will be completed as needed between major revisions. Because of this, OSMRE recommends accessing the [online version of the FFAM](#) to ensure the most accurate and current information. See Chapter section 1-100-40 for additional information on the revision process.

Please refer to Chapter 1-100 for a more in depth look at the structure of this manual.

## **Annex A: Table of Contents**

Click on the Annex, Chapter, or Exhibit name below to navigate to that section. Each Chapter contains an individual table of contents with the sections of that Chapter.

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## Annex B: Definitions

### DEFINITIONS

**Accounting System** – Method for the separate identification of receipts, disbursements, assets, and liabilities, and for the summarization of financial information in a manner that will enable the recipient to prepare the reports required by the Federal agency for an assistance agreement.

**Accrual Basis** – Accounting basis that recognizes transactions when they occur, regardless of the timing of related cash receipts and payments.

**Acquisition Cost** – The (total) cost of the asset including the cost to ready the asset for its intended use. For example, the acquisition cost for equipment, is the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software include those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

**Administratively Complete** – The determination we make that all required parts of an assistance application are present and that sufficient information is provided to determine that costs are necessary, reasonable, allowable, and allocable.

**Allocation** – The process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

**Alterations and Renovations** - Work required to change the physical characteristics of an existing facility or installed equipment as needed by the program to make it more useful for its current purpose or adapt it to a changed use.

**Amendment** – A formal written change to the amount, terms and conditions, performance period or scope of work of an assistance agreement.

**Appeal Procedures** – Procedures which permit an applicant or recipient to request review of a particular issue or decision at a higher level. Appeals of OSMRE decisions are submitted to the appropriate Regional Director or to the Director of OSMRE.

**Applicable Credit** – A negative expenditure item which offsets or reduces an expense. Examples are purchase discounts, rebates, trade-ins, and adjustments of overpayments and erroneous charges.

**Automated Standard Application for Payments (ASAP)** – A secure, web-based electronic

payment and information system that allows federal agencies to administer funds. The system allows for streamlined operations at no charge to federal agencies and their recipients. Managed by US Department of the Treasury.

**Assistance Agreement** – A grant or cooperative agreement awarded by a Federal agency to provide financial assistance to a recipient.

**Assistance Listing Number** – A unique number assigned to identify an Assistance Listing.

**Audit** – A formal review to verify and assess an organization’s financial and programmatic operations.

**Awarding Office** – The OSMRE Regional, Field, or Area office or offices which award and manage a recipient’s assistance agreement.

**Budget** – The financial plan for the Federal award that the Federal agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal agency or pass-through entity.

**Budget Revision** – A change to an assistance agreement budget approved by the Federal agency as needed to carry out the purposes of the project.

**Budget Underrun** – The amount of Federal funds awarded exceeds the needs of the recipient by more than \$10,000 or ten percent of the total agreement amount, whichever is greater. The recipient must notify the Federal agency promptly when a budget underrun is expected to occur.

**Cash Basis** – Accounting basis which recognizes transactions only when cash changes hands.

**Categorical Exclusion (CE)** – A federal action may be "categorically excluded" from a detailed environmental analysis when the federal action normally does not have a significant effect on the human environment ([40 CFR § 1508.1\(d\)](#)).

**Catalog of Federal Domestic Assistance (CFDA)** - A comprehensive listing and description of Federal programs and activities which provide financial assistance or benefits to the public.

**Certified State or Tribe** – A state or tribe in which the Governor or Tribal governing body has certified, and the Secretary has concurred that the state (or Indian tribe) has reclaimed and achieved all of the priorities for abandoned coal mines and other affected lands that existed prior to 1977.

**Closeout** – The process by which the Federal agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in [2 CFR § 200.344](#).

**Conflict of Commitment** – A non-financial conflict of interest in which an individual accepts or



incurs conflicting obligations, whether domestic or foreign, between or among multiple employers or other entities. This includes conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies or commitments.

**Conflict of Interest** – Outside activities, relationships, or financial interests of a recipient or an employee which may lead the entity to be motivated, or to give the appearance of being motivated, by a desire for private gain.

**Consultant** – A person engaged to give professional advice or services for a fee, but not as an employee of the paying organization.

**Cooperative Agreement** – means a legal instrument of financial assistance between a Federal agency and a recipient or between a pass-through entity and subrecipient, consistent with [31 U.S.C. 6302–6305](#):

1. Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see [31 U.S.C. 6101\(3\)](#)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;
2. Is distinguished from a grant in that it provides for substantial involvement of the Federal agency or pass-through entity in carrying out the activity contemplated by the Federal award.
3. The term does not include:
  - A cooperative research and development agreement as defined in [15 U.S.C. 3710a](#); or
  - An agreement that provides only:
    1. Direct United States Government cash assistance to an individual;
    2. A subsidy;
    3. A loan;
    4. A loan guarantee or insurance.

**Cost Analysis** – The process of obtaining cost breakdowns, examining, or verifying cost data, and evaluating specific elements of costs to determine that costs in an assistance agreement budget are in compliance with 2 CFR 200 Subpart E.

**Cost Principles** – The principles published in OMB regulations which Federal agencies use to determine whether costs are allowable in Federal assistance agreements.

**Cost Transfers** – The reassignment of costs from one project activity to another.

**Costs** – The allowable direct costs of an assistance agreement activity, plus the allocable portions of the allowable indirect costs of an organization, less allocable credits.

**Debarment** – The exclusion of a person or entity from participating in covered Federal transactions, following proper notification, hearing and appeal procedures.

**De-obligation** – An agency’s cancellation or downward adjustment of previously incurred obligations. Deobligated funds may be reobligated within the period of availability of the appropriation. For example, annual appropriated funds may be reobligated in the fiscal year in which the funds were appropriated, while multiyear or no-year appropriated funds may be reobligated in the same or subsequent fiscal years.

**Deviation from Policy** – The use of any policy, procedure, form, or condition which is inconsistent with agency policy, or the failure to use a prescribed policy, procedure, form, or condition for an assistance agreement.

**Direct Costs** – Costs that can be identified specifically to a particular program or cost objective.

**Disbursements** – Payments in cash or by check or electronic funds transfer.

**Discretionary Award** – An award in which the Federal agency, in keeping with specific statutory authority that enables the agency to exercise judgment (“discretion”), selects the recipient or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

**Distribution** – The process the Federal agency uses to divide funding available for a mandatory grant program between the eligible program recipients.

**Draw Down** – A drawdown is a request for a cash payment from the assistance agreement.

**Environmental Impact** – The probable environmental consequences of any major Federal action.

**Equal Employment Opportunity** – Non-discrimination against any person in recruitment, examination, appointment, training, promotion, retention, and discipline because of political or religious opinions or affiliations, or because of race, national origin, or other non-merit factors.

**Equipment** – Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or \$10,000. See property.

**Expiration Date** – Period of Performance end date of an assistance agreement.

**Extension** – Delay the date of an action. Change the ending date of an assistance agreement to provide additional time to complete the program activity. Change the due date to provide additional time to complete a required action such as a report.

**Federal Financial Assistance** – Per [2 CFR 200.1](#) Federal financial assistance means

- (1) Assistance that non-Federal entities receive or administer in the form of:
  - (i) Grants;
  - (ii) Cooperative agreements;
  - (iii) Non-cash contributions or donations of property (including donated surplus property);
  - (iv) Direct appropriations;
  - (v) Food commodities; and
  - (vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).
- (2) For § 200.203 and subpart F of this part, Federal financial assistance also includes assistance that non-Federal entities receive or administer in the form of:
  - (i) Loans;
  - (ii) Loan Guarantees;
  - (iii) Interest subsidies; and
  - (iv) Insurance.
- (3) For § 200.216, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:
  - (i) Grants;
  - (ii) Cooperative agreements;
  - (iii) Loans; and
  - (iv) Loan Guarantees.
- (4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

**Federal Reclamation Program Project** – Emergency or high priority AML abatement or reclamation project undertaken by OSMRE on lands and waters not under an approved state or Tribal reclamation or emergency program. Reclamation may be funded through a Federal contract, a cooperative agreement with a state or tribe, or an interagency agreement with another Federal agency.

**Federal Share** – The portion of the Federal award costs that are paid using Federal funds.

**Federally-Recognized Indian Tribal Government** – The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

**Forms Clearance** – Process for a Federal agency to obtain prior clearance from OMB in order to require multiple applicants/recipients to complete a form or respond to an information request.

**Finding of No Significant Impact (FONSI)** – A FONSI is issued when environmental analysis

and interagency review during the NEPA environmental Assessment process finds a project to have no significant impacts on the quality of the environment. The FONSI document is the Environmental Assessment modified to reflect all applicable comments and responses.

**Freedom of Information Act (FOIA)** – Law governing the release of certain requested information to any member of the public.

**Grant Agreement** – A legal instrument of financial assistance between a Federal agency and a recipient or between a pass-through entity and a subrecipient, consistent with [31 U.S.C. 6302, 6304](#):

1. Is used to enter into a relationship, the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see [31 U.S.C. 6101\(3\)](#)); and not to acquire property or services for the Federal agency or pass-through entity's direct benefit or use;
2. Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal agency in carrying out the activity contemplated by the Federal award.
3. Does not include an agreement that provides only:
  - Direct United States Government cash assistance to an individual;
  - A subsidy;
  - A loan;
  - A loan guarantee or insurance.

**Grantee** – Organization or entity receiving a grant. See Recipient.

**Indirect Costs** – Those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served. Indirect cost pools must be distributed to benefitted cost objectives on basis that will produce an equitable result in consideration of relative benefits derived. For Institutions of Higher Education (IHE), the term facilities and administrative (F&A) cost is often used to refer to indirect costs.

**In-Kind** – Contributions other than cash, such as goods and services or the use of real or personal property, made by the recipient or by third parties directly benefiting and specifically identifiable to the assistance program activity.

**Lobbying** – Any activity designed to influence a member of Congress to favor or oppose any legislation, including appropriation, whether before or after the introduction of any bill or resolution proposing such legislation.

**Match** – Level of non-Federal support, cash or in-kind, a recipient is required by law or

regulations to provide to be eligible for an assistance agreement under a specific program.

**Non-discretionary Award** – An award made by the Federal agency to specific recipients in accordance with statutory, eligibility, and compliance requirements, such that in keeping with specific statutory authority, the Federal agency cannot exercise judgment (“discretion”). A non-discretionary award amount could be specifically determined or by formula.

**Notice of Grant Award (NGA)** – The official legal document issued to the grantee that indicates a federal grant award has been made and funds may be requested to be used, and reported on, in the approved manner. Also known as, Notice of Award (NOA).

**Notice of Funding Opportunity (NOFO)** – A formal announcement of the availability of Federal funding through a financial assistance program from a Federal agency. The notice of funding opportunity provides information on the award, such as who is eligible to apply, the evaluation criteria selecting a recipient or subrecipient, the required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term.

**Obligations** – Legal commitment by an organization which binds funds for payment, such as the award of an assistance agreement or a contract.

**Office of Management and Budget (OMB)** – The Executive Office of the President, Office of Management and Budget.

**Payment** – Federal funds transferred to recipients by electronic fund transfer. Payments may be in advance of cash outlays by the recipient or reimbursements of previous outlays from the recipient’s own cash.

**Period of Performance** – The time interval between the start and end date of a Federal award, which may include one or more budget periods. Identification of the period of performance in the Federal award consistent with [2 CFR § 200.211\(b\)\(5\)](#) does not commit the Federal agency to fund the award beyond the currently approved budget period.

**Personal Identifiable Information (PII)** – Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII is available in public sources such as telephone books, websites, and university listings. The definition of PII is not attached to any single category of information or technology. Instead, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that could be used to identify an individual when combined with other available information.

**Pre-award Costs** – Costs incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

**Privacy Act of 1974** – Law mandating that personal information about individuals collected by Federal agencies be limited to that which is legally authorized and necessary. Personal information must be maintained, used, and disseminated as to prevent unwarranted intrusions upon individual privacy.

**Prior Approval** – The written approval obtained in advance by an authorized official of a Federal agency or pass-through entity of certain costs or programmatic decisions.

**Problem Area** – A problem area is a subdivision of a planning unit, containing one or more AML-related problems or one or more non-coal mining related Problem Types together with impacted land and water. See OSMRE directive [AML-1](#) for more detailed information.

**Problem Area Description** – The Problem Area Description (PAD) is specific information required to establish an approved Problem Area within the Enhanced Abandoned Mine Land Inventory System (e-AMLIS) to describe AML problems. The PAD is OSM-76 form (OMB Number: 1029-0087). The paper version of this form was eliminated in 2010 when PAD information was fully converted to an electronic format.

**Program Income** – Gross income earned by the recipient or subrecipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in [2 CFR 200.307](#). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See [2 CFR § 200.407](#). See also [35 U.S.C. 200–212](#) “Disposition of Rights in Educational Awards,” which applies to inventions made under Federal awards.

**Project** – An AML project is an area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a state or within a logical geographic area such as a watershed, conservation district or county planning area.

## **Property**

- a. Real property – land, including land improvements, structures, and appurtenances thereto,

and legal interests in land, including fee interest, licenses, rights of way, and easements. Real property excludes moveable machinery and equipment.

- b. Personal property – property other than real property. It may be tangible or intangible.
- c. Tangible personal property – personal property having physical existence.
- d. Intangible personal property – property having no physical existence, such as trademarks, copyrights, data (including data licenses), websites, IP licenses, trade secrets, patents, patent applications, and property such as loans, notes and other debt instruments, lease agreements, stocks and other instruments of property ownership of either tangible or intangible property, such as intellectual property, software, or software subscriptions or licenses.
- e. Expendable personal property - personal property other than equipment.
- f. Nonexpendable personal property - tangible personal property with a useful life of more than one year.

NOTE: A recipient may use its own definition of property provided that its definition would at least include all property as defined above.

**Recipient** – An entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award.

**Record of Decision (ROD)** – The Record of Decision (ROD) is the conclusion of the NEPA Environment Impact Statement (EIS) process. The ROD document is prepared after the final EIS and identifies the Preferred Alternative.

**Regulations** – Governmental orders having the force of law. Regulations are published in the Federal Register and the Code of Federal Regulations (CFR) as the official notification to the public of the implementation of a program or the establishment of rules or procedures.

**Rejections** – Financial assistance applications that have been found to be insufficient and returned to the recipient. Rejected applications do not qualify as administratively complete applications.

**Reobligation** – Obligation of deobligated funds for a different authorized use.

**Scope Change** – A programmatic change in the work to be performed under an assistance agreement that is outside the range of work contemplated at the time of award.

**Single Source:** A funding opportunity specifically directed to a known recipient, e.g., a friends' group, fundraising partner, non-governmental organization, landowner or geographically positioned entity, either statutorily designated or determined by a bureau or office to be an appropriate partner based on demonstrable criteria, such as unique expertise or capacity.

**Site Visit** – Meeting or review (financial and/or programmatic) by Federal program, grants or management staff or consultants at a recipient's office, virtually, or at the site of any activity supported by the assistance agreement.

**State** – Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

**State Plan** – Proposal to establish a regulatory or reclamation program under the Surface Mining Control and Reclamation Act (SMCRA) submitted by an eligible state or tribe and approved by the Secretary of the Interior.

**Subgrant/Subaward/Subcontract** – An award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. It does not include payments to a contractor, beneficiary, or participant. A subaward may be provided through any form of legal agreement consistent with criteria in with 2 CFR 200.331, including an agreement the pass-through entity considers a contract.

**Supply** – All tangible personal property other than those described in the equipment definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes or \$10,000, regardless of the length of its useful life. See the definitions of *computing devices* and *equipment*.

**Suspension** – A Federal action which temporarily halts operations under an assistance agreement because of a problem. Suspension allows time for corrective action by the recipient or the Federal agency's decision to terminate the agreement.

**Technical Assistance** – Advice or training provided by the Federal agency or staff to increase the effectiveness of the recipient's program and/or administrative staff.

**Termination** – The action of a Federal agency or pass-through entity takes to discontinue a Federal award, in whole or in part, at any time before the planned end date of the period of performance. Termination does not include discontinuing a Federal award due to a lack of available funds.

**Uncertified State or Tribe** – A state or tribe that has not yet reclaimed all lands and water that were either mined for coal or affected by coal mining and abandoned or left in an inadequate reclamation status prior to 1977.



**Unliquidated Financial Obligation** – Financial obligations incurred by the recipient or subrecipient but not paid (liquidated) for financial reports prepared on a cash basis. For reports prepared on an accrual basis, these are financial obligations incurred by the recipient or subrecipient but for which expenditures have not been recorded.

**Unobligated Balance** – The amount of funds under a Federal award that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated financial obligations and expenditures under the Federal award from the cumulative amount of funds the Federal agency or pass-through entity authorized the recipient or subrecipient to obligate.

## **Annex C: Acronyms, Abbreviations, and Initialisms**

A&E	Administration and Enforcement
ACH	Automated Clearinghouse
AC	Account Code
AD-F&A	Assistant Director, Finance and Acquisition
AD-PS	Assistant Director, Program Support
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLER	Abandoned Mine Land Economic Revitalization
AR	Appalachian Regional Office
ASAP	Automated Standard Application for Payments
ATP	Authorization to Proceed
AVS	Applicant Violator System
BIL	Bipartisan Infrastructure Law
BABA	Build America Buy America Act
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CSP	Clean Streams Program
DBA	Davis-Bacon Act
DD	Deputy Director
DFA	Division of Financial Assistance
DFM	Division of Financial Management
DOI	Department of the Interior
DRS	Division of Reclamation Support
e-AMLIS	Enhanced Abandoned Mine Land Inventory System
EIS	Environmental Impact Statement
EFT	Electronic Funds Transfer
EPA	Environmental Protection Agency

EPLS	Excluded Parties List System
FAADS	Federal Assistance Award Data System
FFAM	Federal Financial Assistance Manual
FBMS	Financial and Business Management System
FE	Accounting Code for Federal Expense Funds and Minimum Program Make-Up Funds
FMFIA	Federal Managers' Financial Integrity Act
FO	Field Office
FOD	Field Office Director
FONSI	Finding of No Significant Impacts
FY	Fiscal Year
GMO	Grants Management Officer
GMS	Grants Management Specialist
GS	GrantSolutions
HC	Accounting Code for Historic Coal Funds
HU	Accounting Code for Prior Balance Replacement Funds
IJA	Infrastructure Investment and Jobs Act
IMCC	Interstate Mining Compact Commission
MCR	Mid-Continent Region
MDTI	Mine Drainage Technology Initiative
MSHA	Mine Safety and Health Administration, Department of Labor
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act
NIDS	News Item Data Sheet
OC	OSMRE Office of Communications
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPAB	OSMRE Office of Planning, Analysis and Budget
OSMRE	Office of Surface Mining Reclamation and Enforcement

PA	Problem Area
PAD	Problem Area Description
P.L.	Public Law
PTPP	Passive Treatment Protection Program
RA	Regulatory Authority (State or Tribal)
REG	Regulatory Grants
RD	Regional Director
RO	Regional Office
SAM	System for Award Management
SHPO	State Historic Preservation Officer
SOAP	Small Operator Assistance Program
SPOC	Single Point of Contact
SMCRA	Surface Mining Control and Reclamation Act of 1977
SS	Accounting Code for State Share/Tribal Share
UGMMI	Underground Mine Mapping Initiative
USC	United States Code
WCAP	Watershed Cooperative Agreement Program
WIEB	Western Interstate Energy Board
WR	Western Region
Youth	Youth Cooperative Agreement Program

# **Annex D: FFAM Part 1 - Requirements for All OSMRE Assistance Agreements**

## **CHAPTER 1-100 DESCRIBING THE FEDERAL FINANCIAL ASSISTANCE MANUAL**

### **Table of Contents**

- 1-100-00 Purpose
- 1-100-10 Objectives
- 1-100-20 FFAM Organization
- 1-100-30 FFAM Breakdown
- 1-100-40 Revisions
- 1-100-50 Revision Approval

### **1-100-00 Purpose**

The purpose of this chapter is to describe the Federal Financial Assistance Manual (FFAM). The FFAM is an official OSMRE manual, identified as number GMT-10 in the OSMRE policy directive system. The FFAM provides policies and procedures to manage financial assistance agreements awarded by OSMRE.

### **1-100-10 Objectives**

This chapter describes the organization of the FFAM. It identifies the OSMRE office that is responsible for this manual. It explains how OSMRE goes about changing or updating this manual, and how a recipient can provide comments and suggestions for the FFAM. This chapter also sets a process for OSMRE to use if a policy is bypassed in the FFAM.

### **1-100-20 FFAM Organization**

- A. The FFAM is divided into six broad parts by grouping together topics or chapters on related financial assistance policies or programs. A chapter is the standard unit in the FFAM, generally addressing one financial assistance topic or process. Within chapters, information is broken out into sections, paragraphs, and subparagraphs as needed.
- B. The numbering system of the FFAM reflects this structure.

- Part.....1
- Chapter.....1-100
- Section.....1-100-20
- Paragraph.....1-100-20A
- Subparagraph.....1-100-20A.1

## **1-100-30 FFAM Breakdown**

Part 1- Requirements for All OSMRE Assistance Agreements: This includes general policies and procedures for any OSMRE grant or cooperative agreement. These chapters describe the rules, and processes we use to award and manage assistance agreements.

Part 2- General Requirements for Federal Assistance: This includes policies for the assistance awarded by all federal agencies. These policies come from Federal laws, executive orders, and regulations, particularly Office of Management and Budget (OMB)'s Uniform Administrative Requirements, Cost Principles, and Audit Requirements.

Part 3- Allowable Costs: This explains which costs may be charged to OSMRE assistance agreements and how to handle different types of costs.

Part 4- Abandoned Mine Lands (AML) Grant Program: This includes specific program, financial, and grant processing requirements for the AML program.

Part 5- Regulatory Grant Program: This includes specific requirements for the Title V regulatory program.

Part 6- Cooperative Agreement Programs: This includes specific requirements for the cooperative agreements including Watershed Cooperative Agreement Program, Applied Science, Mine Drainage Technology Initiative, Passive Treatment Protection Program, and the Youth Program.

## **1-100-40 Revisions**

- A. The Division of Financial Assistance (DFA), under the Program Support Directorate in OSMRE headquarters, is responsible for managing the FFAM.
- B. Division of Financial Management (DFM) may assist in the revision of FFAM when necessary to reflect changes in OSMRE financial assistance programs, the policies and procedures governing assistance, or the processes used to award and manage assistance agreements.
- C. OSMRE encourages all FFAM users to suggest improvements or revisions to this manual. Please send suggestions or comments to Program Support Directorate, Division of Financial Assistance, using the contact information in the conclusion section of this manual.
- D. All proposed revisions to FFAM will be available for review and all comments received will be addressed as required by OSMRE policy on directives.
- E. Major revisions to the FFAM will use OSMRE's directive reissuance process. OSMRE

may use interim policy memoranda to address policy changes to the FFAM that must be implemented quickly. Interim policy changes established by such memoranda will be, as appropriate, incorporated into subsequent reissuances of the FFAM as soon as practicable. For administrative and non-policy altering updates to the FFAM, DFA will use the appendix revision process per OSMRE's policy directives process.

### **1-100-50 Revision Approval**

- A. If Federal statute contradicts a section of the FFAM, then the OSMRE awarding office must act as the law requires. If this occurs, DFA must notify the AD-PS of the conflict between the statute and FFAM. In these cases, Program Support may issue clarifying memoranda as appropriate.
- B. OSMRE will implement FFAM as consistently as possible. Therefore, any deviations from the FFAM must be kept to a minimum. OSMRE will use the following procedures to request and approve FFAM exceptions that are not required by Federal law:
  - 1. The OSMRE office authorized to approve an award (awarding office) may send requests to deviate from FFAM through the Regional Director to the AD-PS. The request must identify the programs affected and the FFAM provision for which the exception is requested. The request must clearly explain and justify the requested exception.
  - 2. The AD-PS may approve deviation requests that only affect one assistance agreement. The official file for that agreement must document the chapter and section of the FFAM rule involved, the reason for deviating from it, and the name and title of the authorizing official.
  - 3. The Director or Deputy Director must approve deviations affecting more than one assistance agreement.

**CHAPTER 1-110**  
**OSMRE RESPONSIBILITIES FOR THE ADMINISTRATION OF FINANCIAL ASSISTANCE**  
**AGREEMENTS**

**Table of Contents**

1-110-00 Purpose  
1-110-10 Approval of Assistance Agreements  
1-110-20 Management of the Assistance Agreements  
1-110-30 Policy Establishment  
1-110-40 Financial Management Establishment  
1-110-50 Communication Practices

**1-110-00 Purpose**

The purpose of this chapter is to explain how the Office of Surface Mining Reclamation and Enforcement (OSMRE) assigns the responsibilities for managing the various financial assistance programs to the regional offices. This information applies to all OSMRE assistance programs.

**1-110-10 Approval of Assistance Agreements**

- A. The Director of OSMRE is authorized to approve each assistance award. The Director delegates this authority to the Regional Directors, who may delegate it further.
- B. By approving the assistance award, the authorized official certifies that, in their opinion, the agreement is in accordance with all applicable laws and regulations, Departmental, and OSMRE assistance and program policies.
- C. No authorized official can be required to approve an assistance agreement unless the official is fully satisfied with the award.

**1-110-20 Management of Assistance Agreements**

The Regional Directors manage OSMRE's regional offices, as well as the field and area offices within each region. They are responsible for the award and management of OSMRE assistance agreements. They may delegate these functions to any of the offices or staff they manage. The office that awards a particular assistance agreement will manage the award from application to close out (completion). The awarding offices are responsible for the following activities:

- A. Receive and review assistance applications. Work with recipients to resolve all issues. Approve and process grant and cooperative agreement awards.
- B. Determine availability of funds for award. Approve obligations and de-obligations of assistance funds.



- C. Coordinate with the Office of Communications to announce awards.
- D. Coordinate with the DFA on assistance processing and all grants management issues.
- E. Coordinate with the DFM on assistance funding and financial management issues.
- F. Administer the awarded assistance agreements. Process and approve necessary amendments and budget revisions.
- G. Receive, review, and take any necessary action on performance and financial reports by assistance agreement recipients.
- H. Conduct oversight of program and project operations supported by assistance funds. Conduct reviews of recipient financial and operational systems. Resolve issues with recipients.
- I. Work with recipients to resolve audit findings and recommendations.
- J. Work with recipients to get assistance budget estimates. Provide analysis and recommendations on recipients' budget estimates.
- K. Regional offices maintain the official assistance agreement files.
- L. Initiate, conduct, or assist in training sessions for recipients and OSMRE staff.

### **1-110-30 Policy Establishment**

The Assistant Director, Program Support Directorate (AD-PS), in OSMRE headquarters, is responsible for the programmatic and administrative policy on financial assistance. Under the AD-PS, DFA has the following responsibilities related to assistance policy and management:

- A. Develop, maintain, and coordinate national policy and uniform procedures for assistance administration.
- B. Develop agency-wide guidance on assistance programs.
- C. Provide procedures and direction for reviews or special studies of financial assistance programs to assess compliance with applicable laws, regulations, policies, and procedures.
- D. Advise OSMRE management on financial assistance issues.
- E. Maintain liaison with the Department of the Interior, the Office of Management and Budget, and other Federal agencies on assistance policy issues and procedures.

- F. Develop procedures for the distribution of assistance program funds. Coordinate with the Regional Directors and Division of Financial Management to prepare the annual regulatory and AML grant distributions.
- G. Create and post all OSMRE Notice of Funding Opportunities (NOFO).

#### **1-110-40 Financial Management Establishment**

The Assistant Director, Finance and Acquisition Directorate (AD-F&A), in OSMRE Headquarters, is responsible for providing financial management support to the agency. Under the AD-F&A, DFM, located in Denver, Colorado, has the following responsibilities to support OSMRE assistance programs:

- A. Maintain the official accounting records for assistance transactions.
- B. Coordinate with Treasury to manage the system to transfer assistance funds to recipients.
- C. Monitor and report information on financial assistance operations.
- D. Calculate the annual AML fund distributions in coordination with the AD-PS.

#### **1-110-50 Communication Practices**

- A. With multiple offices involved in financial assistance, it is particularly important that all these offices establish and maintain open, clear, and effective channels of communication with each other. Offices must share information regarding their decisions and actions, especially on matters with wide applicability to other assistance operations to ensure consistency in financial assistance operations throughout OSMRE.
- B. DFA is responsible for coordinating and ensuring consistency between offices involved in financial assistance operations. This includes all OSMRE offices whose primary responsibility is financial assistance. DFA meets regularly with OSMRE offices responsible for financial assistance operations to identify assistance issues, develop resolutions, and share ideas and best practices.

## **CHAPTER 1-120**

### **ASSISTANCE AGREEMENT APPLICATIONS AND AWARDS**

#### **Table of Contents**

- 1-120-00 Purpose
- 1-120-10 Where to Apply
- 1-120-20 When to Apply
- 1-120-30 Application Requirements
- 1-120-40 Review and Selection
- 1-120-50 Award Requirements
- 1-120-60 Information Stored in the Official Assistance File

#### **1-120-00 Purpose**

- A. The purpose of this chapter is to explain how an applicant can apply for a grant or cooperative agreement awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). It also explains how OSMRE reviews an application, and the process used to award an agreement if the application is approved.
- B. This section, 1-120, does not apply to the assistance programs specifically described in other chapters of this manual. This chapter applies to all other OSMRE financial assistance agreements, such as new, experimental, or one-time grants, or cooperative agreements.

#### **1-120-10 Where to Apply**

A complete application may be sent by one of the following methods:

- A. Enter the application in an approved electronic portal such as GrantSolutions or [Grants.gov](https://www.grants.gov).
- B. If the applicant is not able to upload the application to the electronic portal, then they may e-mail the application to the appropriate Regional Office. The name and title of the authorized official who signed the original forms and the date signed in the signature section of the application must be visible. The applicant must maintain the original signed documents in their files.

#### **1-120-20 When to Apply**

Refer to the Notice of Funding Opportunity (NOFO) for application deadlines and other important information when applying. A complete application must be submitted at least 60 days before the intended Period of Performance start date.

## 1-120-30 Application Requirements

A complete application must provide all the information required by the NOFO to assist OSMRE in deciding whether to approve the application and to process an assistance agreement. The following items must be included in the application package:

- A. Signed or approved Application for Federal Assistance, SF-424
- B. A complete Program Narrative. The Program Narrative must explain the anticipated use of federal funds. The following must be included in the narrative:
  1. Objectives and Need for Assistance. Explain the need for the assistance. State the principal and subordinate objectives of the proposed assistance agreement. Include relevant data and identify the sources of the data.
  2. Results and Benefits Expected. Identify results and benefits the proposed program will produce. For example, describe how this assistance agreement will help improve the environment and protect the health, safety, and welfare of the public.
  3. Approach. Outline a plan of action for the assistance agreement. Describe how the proposed work will be accomplished. Cite factors that might help or hinder the work. Explain the reasons for taking this approach as opposed to others. Describe any unusual features of this assistance agreement. Identify the kinds of data to be collected and maintained. Discuss the criteria and methodology to be used to evaluate the results and success of the proposed program.
- C. Itemized budget information. The itemized budget must list the project costs. It must break out the total costs by line item, such as personnel and supplies. If the project will include more than one activity, the budget must break out the total costs by activity. If the project will include funds from other sources, the budget must break out total costs by the source of the funds. The applicant may use the [optional OSMRE 47/49 form](#) or any format.
- D. A complete Budget Narrative. The budget justification narrative must explain each cost included in the itemized budget list. Describe how these costs are calculated and why they are necessary. The applicant must provide enough information to determine whether the line items included under each activity are reasonable, necessary, and allowable.
- E. Briefly describe the recipient's organizational structure.
- F. Describe any partners, other funding, and other support for the project.
- G. Provide an appropriate Assurances form signed and dated by the organization's authorized official. Use

either the Assurances for Non-Construction Programs, form SF-424B; or the Assurances for Construction Programs, form SF-424D.

- H. Negotiated Indirect Cost Rate Agreement, indirect cost rate proposal, Cost Allocation Plan (CAP), or de minimis rate.
- I. Lobbying Certification or SF-LLL (See Lobbying Section).
- J. If the organization is a Non-Profit, then include 501(c)(3) designation.

### **1-120-40 Review and Selection**

Once OSMRE accepts an administratively complete application, it will normally review and process that application within 60 days.<sup>1</sup> Applications that are determined by the awarding office to be incomplete or insufficient will be rejected. Rejected applications are returned to the recipient who may resubmit with corrections if appropriate. The awarding office must take the following actions to review the application:

- A. If the application is received by email, if all other avenues were unsuccessful, then OSMRE must confirm the receipt of the application within three business days.
- B. Determine the application is administratively complete barring no rejections and that there are no mathematical errors.
- C. Confirm funds are available for the award.
- D. Confirm the organization is eligible for Federal assistance funds. Check the System for Award Management (SAM) to determine whether the organization or an individual within the organization is debarred, suspended, or otherwise ineligible. Verify the recipient's registration is active and not expired. Confirm the organization is in compliance with the single audit requirements, if applicable; otherwise, the organization will need to complete the Financial Capability Questionnaire.
- E. Review the application. The programmatic review will assess the need for the program, its likelihood of success, and its appropriateness for OSMRE. The financial and programmatic reviews will address whether the proposed costs are reasonable and necessary, and allowable, the program will be efficient and effective, and the organization is able to manage Federal funds.
- F. The application review will determine whether to approve the application. If approved, OSMRE will award a grant or cooperative agreement. If the application is disapproved, then the applicant will receive notification of the decision.

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<sup>1</sup> The 60 day review period commences when an administratively complete application is submitted. Applications that were rejected and resubmitted will begin the 60 day review period only if they meet the standard for administratively complete.

## **1-120-50 Award Requirements**

After the decision is made to award an agreement, the awarding office will take the following actions to process the award:

- A. Before releasing (or administering) the award, OSMRE will provide information about the planned award to the Office of Communications for Congressional and public news release.
- B. The award will be processed through the current electronic grant system. The accounting system will post the award to Treasury's grant payment system, such as Automated Standard Application for Payments (ASAP), where it will be available for the recipient to request funds.
- C. A written agreement will be sent to the recipient through a Notice of Award (NOA). This will provide the information about programmatic and financial reporting requirements, how to manage the agreement, and how to contact OSMRE via the terms and conditions.

## **1-120-60 Information Stored in the Official Assistance File**

The following is the minimum level of documentation OSMRE will maintain in the official assistance agreement file. Any additional supporting information and reports as appropriate for the particular application, the recipient, and the awarding office will be included as follows:

- A. Application as originally received, all subsequent additions or revisions, and any other information received.
- B. Records of all meetings or telephone conversations which provided information in support of the application.
- C. Correspondence between OSMRE and the recipient about the application or the award decision.
- D. OSMRE's internal reviews of the application or parts of the application, such as Programmatic Review Checklist and the Grant Action Checklist.
- E. Explanations or resolutions of questions raised during the review process, including findings and recommendations.
- F. Records or explanations of the timing of the award process, especially any time period when the awarding office could not process the award because it was waiting for actions outside its control, such as responses to questions or availability of funds.

**CHAPTER 1-130**  
**ASSISTANCE AGREEMENT CONDITIONS AND AWARD DOCUMENTS**

**Table of Contents**

- 1-130-00 Purpose
- 1-130-10 Purpose of the Notice of Award
- 1-130-20 Information included in the Notice of Award
- 1-130-30 Award Conditions
- 1-130-40 Special Conditions
- 1-130-50 Additional Information Provided

**1-130-00 Purpose**

The purpose of this chapter is to list the conditions that apply to every grant and cooperative agreement awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). It also lists the additional conditions that only apply to assistance agreements for specific programs, including Regulatory, Bipartisan Infrastructure Law (BIL), and Abandoned Mine Land (AML) grants. This section explains the minimum requirements for a Notice of Award (NOA).

**1-130-10 Purpose of the Notice of Award**

The assistance agreement award document is the official instrument used for the following purposes:

- A. Establish a legally binding arrangement between OSMRE and the recipient.
- B. List, or include by reference, the terms and conditions of the agreement.
- C. Serve as the source document for the obligation of Federal funds in OSMRE's accounting system.

**1-130-20 Information included in the Notice of Award**

The award document for an assistance agreement will be processed through the current electronic grant system. The award document must include the following information as required by 2 CFR § 200.211:

- A. Recipient Name (which must match the name associated with its unique entity identifier as defined at 2 CFR § 25.400).
- B. Recipient's Unique Entity Identifier.
- C. Unique Federal Award Identification Number (FAIN).
- D. Federal Award Date.

- E. Period of Performance Start and End Date.
- F. Budget Period Start and End Date.
- G. Amount of Federal Funds Obligated by this Action.
- H. Total Amount of Federal Funds Obligated.
- I. Total Approved Cost Sharing, where applicable.
- J. Total Amount of the Federal Award including approved Cost Sharing.
- K. Budget Approved by the Federal Agency.
- L. Federal Award Description (to comply with statutory requirements (for example, FFATA)).
- M. Name of the Federal agency (including contact information for the awarding official).
- N. Assistance Listing Number (ALN) and Title.
- O. Identification of whether the Award is R&D.
- P. Indirect Cost Rate for the Federal award (including if the de minimus rate is charged per 2 CFR 200.414).
- Q. Agreement Identification, including the grant or cooperative agreement number, and the amendment number.
- R. Reporting frequency and documents.
- S. Statement of substantial involvement for all cooperative agreements.
- T. The award must incorporate the following conditions by reference:
  - 1. The Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended, P.L. 95-87, and any other relevant statutes.
  - 2. An acknowledgement that the recipient will abide by their application.
  - 3. The approved state or tribal regulatory or reclamation plan for this program, if applicable.
  - 4. Any OSMRE policy directives that apply to this agreement, including this *Federal*



5. All terms, conditions, or agreement clauses that are required by the Department of the Interior, OSMRE, or program policies.

### **1-130-30 Award Conditions**

The following conditions are incorporated into every OSMRE assistance agreement by reference:

1. Assistance funds must only be used to cover allowable costs, which are incurred during the agreement's performance period. Valid obligations incurred before the end of the performance period for cost items specifically identified in the approved application will be considered allowable costs for the performance period to the extent of actual subsequent expenditures. If obligations are included in the claimed costs, adequate records must be maintained to disclose fully the date, and amount of the obligation incurred and the date and amount of subsequent payment. Obligations claimed in one performance period must be excluded from expenditures claimed in prior or subsequent periods. For a grant with a multiyear period of performance, obligation at the end of the first year, as they are paid, would then move into the expenditures in subsequent annual reports.
2. Program income earned under all OSMRE assistance agreements other than Regulatory Administration and Enforcement (A&E) grants must be used to reduce the total cost of the agreement. Program income earned under a Regulatory A&E grant must be used to meet the cost sharing/matching requirement of the grant (cost sharing option). Program income earned under a Regulatory A&E grant in excess of the cost sharing requirement may either be added to the funds committed to the grant agreement (addition option) or used for the deductive option.
3. The recipient must obtain prior OSMRE approval to transfer funds to entities other than those identified in the approved application.
4. Financial reports, performance reports, and other reports must be submitted according to the timing, content, and format as required by OSMRE as specified on the NOA. This includes all program expenditures and program income.
5. For non-construction agreements, transfers of funds between one object class to another requires prior approval when such transfers exceed 10 percent of the total budget. For agreements that fund both construction, and non-construction activities, budget transfers between non-construction and construction subaccounts requires prior approval through a grant amendment.
6. Any refund, rebate, credit, or other amounts arising from the performance of this agreement must be transferred to OSMRE, the appropriate share, based on the Federal support percentage, along with any accrued interest. The recipient must take necessary action to collect all monies due promptly and to cooperate with OSMRE in any claim or suit in

connection with amounts due.

7. The recipient must comply with the requirements, as applicable, set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at [2 CFR Part 200](#), regarding administrative procedures; the Cash Management Improvement Act and [31 CFR Part 205](#) on financial procedures.
8. No employee of the state, Indian tribal government, or Federal government performing any function or duty under the regulatory or reclamation program plan may have a direct or indirect financial interest in any coal mining operation. This includes complying with all requirements and regulations established by OSMRE to carry out this requirement, including [30 CFR Part 705](#), and those requirements that it has adopted in its regulatory program or reclamation plan.
9. Prior to the start of any construction activity, ensure that all applicable Federal, state/local permits, and clearances are obtained.
10. The appropriate funds may not be used for any activity or the publication or distribution of literature that in any way tends to promote public support, or opposition to any legislative proposal on which Congressional action is not complete.
11. Compliance with the Federal procurement requirements in [2 CFR Part 200](#), and requirements of the Buy American Act at [41 U.S.C. § 8301](#).
12. Any original work developed under the course of the agreement is eligible for copyright. OSMRE reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes. Any publication resulting from work performed under the agreement must include an acknowledgment of OSMRE financial support and a statement that the publication does not necessarily reflect the views of OSMRE.
13. No subsequent assistance agreements or amendments will be approved unless all overdue financial or performance reports have been submitted to the appropriate OSMRE office. Only the Regional Director or their designee can approve exceptions to this policy.
14. OSMRE reserves the right to transfer equipment acquired with assistance agreements to the Federal government or a third party. (Note: In order to invoke this provision, the recipient must be notified in writing of the specific item of equipment to be transferred. Equipment must meet the definition in [2 CFR Part 200](#).)
15. The agreement takes effect at the time of approval by the Director of OSMRE or their authorized delegate. The recipient accepts the agreement, including the terms and conditions, by starting work or making the first request for Federal funds approved under the agreement.
  - A. The following condition applies to all Regulatory Administration and Enforcement grant agreements:

This grant is for the administration and enforcement of an approved program for the regulation, and control of surface coal mining, and reclamation operations in accordance with [30 CFR 735](#). Grant funds must not be used for other purposes. As a condition of the grant, the recipient must implement the regulatory program as approved by the Secretary of the Interior, including all findings, and conditions set forth in the Secretary's approval decision, or as may be modified by the Secretary. Grant funds must not be used for implementation of any changes to the regulatory program, which have not been approved by the Secretary of the Interior.

- B. Conditions for AML agreements depend on which AML and BIL functions are included in the specific assistance agreement.
1. The following conditions apply to all AML assistance agreements:
    - a. This agreement is for the administration of the recipient's approved reclamation plan, and for carrying out activities in accordance with the plan and Title IV of SMCRA. Funds from this agreement must not be used for any other purposes.
    - b. The funding for this agreement comes from one or more types of Title IV funds. Each type of fund may only be used as provided in its authorizing statutes and regulations including but not limited to: the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) as amended, OSMRE grant regulations (Code of Federal Regulations: 30 CFR Chapter VII, Parts 740, 745, 746, 795, 800, 850, 865), 30 CFR Chapter VII, Subchapter T, and Infrastructure Investment Jobs Act as applicable.
  2. The following condition applies to AML agreements that include funding for an acid mine drainage set-aside fund:

An acid mine drainage abatement and treatment fund must be established. The amounts deposited into the fund and the interest earned must be used by the recipient for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. *See*, [30 CFR 876.12 \(b\)\(2\)](#). Up to 30% of fee-based funds may be used for this set-aside purpose per 30 CFR 876.12. Up to 30% of BIL funds may be used for this set-aside purpose per STREAM Act in P.L. 17-328.

- C. The following condition applies to all Small Operator Assistance Program (SOAP) operational grant agreements:
- This grant is for costs incurred by qualified laboratories for performance of technical work as provided in [30 CFR 795.9\(b\)](#), and for costs incurred by qualified laboratories or state regulatory authorities for performance of planning activities and training/outreach provided in section 507(c) of SMCRA. Planning activities must be directly related to individual

assistance sites. Indirect costs are allowable only to the extent they relate to planning activities, training/outreach, or other authorized services provided directly by the regulatory authority. Grant funds must not be used for any other purpose, including expenses incurred by the regulatory authority to administer the SOAP.

### **1-130-40 Special Conditions**

Specific conditions may be added to the assistance agreement to address a specific situation that needs special attention. However, imposing specific conditions is not the preferred method and should be a rare occurrence. Action plans developed jointly by the recipient and OSMRE are more likely to succeed than unilaterally imposed specific conditions that may disrupt processes and plans. Therefore, OSMRE reserves the right to use specific award conditions for serious and unusual situations. Unusual situations could include, but are not limited to, high risk recipients, delayed reporting, a history of misdraws, etc. A specific assistance agreement condition must be tailored to the situation and must identify exactly what and how the recipient will address the specific situation that needs special attention. OSMRE will monitor specific conditions closely to ensure strict adherence to [2 CFR 200.208](#).

### **1-130-50 Additional Information Provided**

All report due dates under the financial assistance agreement are automatically generated in the current electronic grant system. If there is a special award condition for a report due date that is not generated in the system, then OSMRE will provide that information and the requirements to the recipient. A list of contacts will be available for the specific program and for financial/payment questions. If applicable, any other information will be provided that may assist in the management of the agreement.

**CHAPTER 1-140**  
**ASSISTANCE AGREEMENT NUMBERING AND FILES ORGANIZATION**

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1-140-00 Purpose  
1-140-10 Assistance Agreement Number Assignment  
1-140-20 Official Assistance Agreement File Oversight  
1-140-30 Official File Storage  
1-140-40 Official Assistance Agreement Files  
1-140-50 Official Assistance Agreement File Organization

**1-140-00 Purpose**

The purpose of this chapter is to explain the assignment of identifying numbers to assistance agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). It also explains the requirements for OSMRE’s official assistance agreement files. It outlines the organization of the official agreement file. These rules apply to all OSMRE assistance programs.

**1-140-10 Assistance Agreement Number Assignment**

- A. All assistance agreement numbers are automatically assigned by the electronic grant system.
- B. The system uses the following numbering structure.
  - 1. The first digit is the letter “S”, which is the Department’s code for OSMRE.
  - 2. The next two numbers show the Federal fiscal year in which OSMRE originally awarded the agreement.
  - 3. The next two letters show the type of agreement. The first letter is “A” for financial assistance. OSMRE grants normally are “AF” for a formula grant (AML/AMLER/BIL) or “AP” for a project grant (Regulatory). “AC” is normally used for cooperative agreements (AS, MDTI, WCAP, and Youth).
  - 4. The final five numbers are automatically assigned by the system in sequential order by program of grant awarding. Thus, if the grant number is S24AP00012, then that grant was the 12th Regulatory grant awarded in FY2024.

**1-140-20 Official Assistance Agreement File Oversight**

- A. The office that awarded the agreement is responsible for the official assistance agreement files.
- B. The official file for each grant or cooperative agreement will be established and maintained

by the appropriate Grants staff in the awarding office.

### **1-140-30 Official File Storage**

Departmental policy requires OSMRE to keep the complete official assistance agreement file electronically.

### **1-140-40 Official Assistance Agreement Files**

Each official assistance agreement file must contain at minimum the following documents:

- A. All documents, emails, etc. received from the recipient.
- B. Complete award documents for the original agreement and all amendments.
- C. Information sent to the recipient with the award.
- D. Findings and recommendations from application reviews and all other documentation from reviewing the application or processing the award.
- E. Recipient performance, financial and other reports.
- F. Monitoring statements, such as the Programmatic Review Checklist and Grant Action Checklist, or other documentation of reviews of recipient performance or reports.
- G. All correspondence from or to the recipient or any other party related to the agreement.

### **1-140-50 Official Assistance Agreement File Organization**

Each awarding office will maintain an official electronic file and must keep the official files for its assistance agreements in a consistent format.

## **CHAPTER 1-150 MONITORING AND TECHNICAL ASSISTANCE**

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- 1-150-00 Purpose
- 1-150-10 Recipient's Monitoring of Program Performance
- 1-150-20 OSMRE's Monitoring of Program Performance
- 1-150-30 Program Performance Monitoring Actions
- 1-150-40 Determination of a "High Risk" Applicant
- 1-150-50 Technical Assistance Provided

### **1-150-00 Purpose**

The purpose of this chapter is to outline the policies and procedures for monitoring all assistance agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Monitoring is the financial and programmatic review and oversight performed to ensure that all the programs are efficient and effective. This chapter also explains the technical assistance which includes, the information, guidance, and training provided to the recipient to help increase the necessary knowledge or skills.

### **1-150-10 Recipient's Monitoring of Program Performance**

The recipient has the primary responsibility for performance under the assistance agreement received from OSMRE. They must monitor all activities, including any subgrants or other agreements. It is their responsibility to assure all work conducted under the agreement is performed in keeping with the terms, conditions, and scope of the approved agreement. The recipient must monitor each program, function, or activity as set forth in the approved application or program plan. They must continually review the performance of all assistance activities to assure adequate and timely progress is being made toward achieving the goals and objectives of the agreement.

### **1-150-20 OSMRE's Monitoring of Recipient Program Performance**

- A. OSMRE must monitor all active assistance agreements to ensure operations comply with Federal laws, regulations, and policies, and are efficient and effective.
  - 1. Programmatic and financial oversight is an important part of the program management. The [REG-8](#) and [AML-22](#) oversight directives establish a joint oversight process. OSMRE staff will work with recipients to develop and carry out a specific oversight program reviewing on-the-ground results for each assistance agreement.
  - 2. Monitoring includes tracking recipient's required reports, reviewing them, and resolving all issues. Monitoring also includes reviews of certain issues considered appropriate for any specific circumstances.

3. Financial monitoring also includes drawdown analysis and review of cash management. See 1-160 in this manual for more information.
- B. Monitoring responsibilities begin when OSMRE receives a financial assistance application. When Grants staff reviews an application, they must determine if the recipient can accomplish the proposed goals in the manner and time frame proposed, and if the recipient can manage the project in compliance with Federal laws and regulations. Grants staff must also assess a level of risk in making this award and develop an appropriate monitoring plan. Once OSMRE approves the assistance agreement, then they will compare the recipient's actual accomplishments to the approved goals and manner of performance.

### **1-150-30 Recipient Program Performance Monitoring Actions**

OSMRE will perform the following required actions:

1. Review and approve each recipient's financial and performance reports.
  2. Evaluate each recipient's timely submission of required reports. Review tracking information provided by the financial system, maintain any additional tracking which may be necessary, and take appropriate action to resolve concerns.
  3. Review and document other information on assistance agreement performance. Information may come from site visits, correspondence, e-mails, and telephone conversations with the recipient or other parties.
  4. Document the results of all assistance agreement monitoring actions on a monitoring statement form or in any appropriate format.
  5. Keep all monitoring documents in the official agreement file. Grants staff will also distribute monitoring documents between OSMRE personnel and offices as appropriate.
- B. OSMRE will select additional monitoring topics as appropriate. Events or circumstances such as the following may suggest topics used to review or analyze a recipient's performance:
1. Statements in a recipient's application regarding requirements, activities, and program objectives.
  2. Previous experience with the recipient in this program, other OSMRE programs, or other Federal programs.



3. Audit reports, including single audits as required by [2 CFR Part 200](#), or audits by the Government Accountability Office, or the Department of the Interior, Office of Inspector General.
4. Implementation of the approved indirect cost rate agreement, cost allocation plan, or de minimis rate.
5. Recipient's implementation of appropriate systems and internal controls for function, such as procurement, property, or cost distribution.

### **1-150-40 Determination of a "High Risk" Applicant**

OSMRE may consider the following criteria when determining the level of risk associated with an applicant per [2 CFR § 200.206](#):

1. Financial stability.
2. Management systems and standards.
3. History of performance.
4. Audit reports and findings.
5. Ability to effectively implement requirements.

OSMRE may implement one or more of the following options to minimize the risk to Federal funds if it is determined an applicant is "high risk":

6. Decline to award a grant or cooperative agreement. OSMRE should not award an assistance agreement if the nature and extent of the risk are so serious that inadequate or improper performance is probable.
7. Convert a grant to a cooperative agreement with additional Federal involvement in program performance.
8. Include special conditions or restrictions in the award. OSMRE may take the following actions per [2 CFR § 200.208](#):
  - a. Pay the recipient on a reimbursement basis rather than advance funds.
  - b. May require approval of each payment request before it is paid to the recipient.
  - c. Withhold authority for the recipient to proceed to the next phase within an agreement until there is evidence of acceptable

performance.

- d. Require prior approval for more of the recipient's operations and activities.
  - e. Require additional and/or more detailed financial reports.
  - f. Require the recipient to obtain technical or management assistance.
  - g. Do additional project or financial monitoring.
1. If OSMRE decides to impose special conditions, the awarding office will notify the recipient in writing as early as possible. OSMRE will provide the following information and refer to [2 CFR § 200.208](#):
    - The nature of the special conditions.
    - The reasons for imposing them.
    - The corrective actions the recipient must take before the removal of the special conditions.
    - The time allowed for the recipient to complete the corrective actions.
    - How the recipient may request reconsideration of the special conditions OSMRE plans to impose.

### **1-150-50 Technical Assistance Provided**

The purpose of technical assistance is to provide the recipient with additional information or to raise their level of competence. When deciding what type of technical assistance is appropriate, OSMRE may consider the following range of services:

- A. Provide technical assistance from OSMRE staff directly to recipient.
- B. Identify appropriate training opportunities and resources.
- C. Ask other available organizations to supply appropriate technical assistance.

## **CHAPTER 1-160 DRAWDOWN ANALYSIS**

### **Table of Contents**

- 1-160-00 Purpose
- 1-160-10 Drawdown Definition and Analysis
- 1-160-20 Requirements to Manage Federal Cash
- 1-160-30 Managing Federal Cash
- 1-160-40 Monitoring the use of Federal Cash
- 1-160-50 Types of Drawdown Reviews
- 1-160-60 Level I Drawdown Review
- 1-160-70 Level II Drawdown Review
- 1-160-80 Resolutions from the Drawdown Review

### **1-160-00 Purpose**

The purpose of this chapter is to explain the policies and procedures for reviewing a recipient's use of Federal cash received from an assistance agreement awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). This information applies to all OSMRE assistance agreements.

### **1-160-10 Drawdown Analysis**

OSMRE will analyze a recipient's drawdowns to ensure they are managing Federal cash in accordance with Federal requirements. DFA, in collaboration with DFM, will randomly select a sample set of open grants and provide to each awarding office the active grants selected for a drawdown review.

### **1-160-20 Requirements to Manage Federal Cash**

- A. The Federal government requires a recipient minimize the time spent holding Federal cash in order to minimize the interest costs to the U.S. Treasury.
- B. The Department of the Interior requires methods and procedures for payment must minimize the time that lapses between when funds are received and when the funds are paid out. This requirement comes from the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* at [2 CFR Part 200 Subpart D](#).
- C. The Cash Management Improvement Act (CMIA) of 1990 (P.L. 101-453), as amended by the Cash Management Improvement Act of 1992 (P.L. 102-589), provides the general rules and procedures for the efficient transfer of Federal financial assistance between the U.S. Treasury and recipients. All Federal funds transfers to recipients are covered. However, only major assistance programs (the highest-dollar programs) are included in written Treasury-State Agreements. These agreements specify how

transfers of Federal funds to recipients will take place. They assess interest liability for not performing the terms of the agreement.

- D. U.S. Treasury *Rules Applicable to Federal Assistance Programs not Included in a Treasury-State Agreement*, at [31 CFR 205](#), requires a recipient to minimize the time between when they drawdown Federal funds and pay them out for their assistance program. The payments must be limited to the minimum amounts needed. The payment must be timed in accord with the actual immediate cash requirements to carry out the program. The timing and amount of payments must be as close as is administratively feasible to the actual cash expenditure for direct program costs and the appropriate share of any allowable indirect costs. The recipient must exercise sound cash management in paying funds to any subrecipients.

### **1-160-30 Managing Federal Cash**

- A. Recipient must limit advances of Federal funds to the minimum amount needed to meet the actual and immediate cash payments.
- B. Recipient must pay out Federal funds as soon as is administratively feasible under their financial management systems.
- C. If there is a CMIA Treasury-State Agreement, the recipient must comply with it.

### **1-160-40 Monitoring the use of Federal Cash**

- A. OSMRE must monitor a recipient's compliance with Federal requirements. Grants staff will review the recipient's use of funds paid by Treasury to ensure they do not request excessive amounts of advance funds and they do not keep cash in excess of the immediate need.
- B. OSMRE will determine the appropriate timing, magnitude, and complexity of a review.
- C. If there are indications during a drawdown review that Federal funds may not be properly accounted for, OSMRE will review the issue sufficiently to determine whether further action is needed.

### **1-160-50 Types of Drawdown Reviews**

- A. OSMRE will perform a Level I drawdown review the first time Grants staff assesses a recipient's system, after significant changes to their systems, or when the reviewer determines it is appropriate. A Level I review has the following objectives:
  - 1. To understand the recipient's systems for requesting and making payments.

2. To identify major problems or changes in their systems.
- B. OSMRE will periodically perform a Level II review to monitor continuing performance of a system that has previously been reviewed. The objective of the review is to determine whether a recipient's systems for requesting and paying Federal funds continue to comply with Federal requirements.

### **1-160-60 Level I Drawdown Review**

- A. OSMRE will review the recipient's procedures to the extent needed to draw and support conclusions about their systems including requesting draw samples (10% of draws for each grant) to review draws for consistency, allocability, and reasonableness.
1. The reviewer will collect information about a recipient's systems. This phase may include the following steps:
    - a. Review recipient's laws, regulations, policies, procedures, and financial management systems. This will include reviewing the processes for requesting and paying out Federal funds.
    - b. Flowchart or outline of the processing steps according to recipient's written policies, and/or the actual procedures being followed.
    - c. Test the procedures used to request Federal Funds. If there are multiple OSMRE assistance programs, then reviewers will examine transactions to test each program.
    - d. Test the procedures for paying out Federal funds.
    - e. Develop an expenditure rate. Compare the amount of Federal funds requested to recipient's expenditure rate.
    - f. Determine the frequency rate for cash draws.
    - g. Track the amount of the cash balance on hand and the Federal funds requested for each drawdown request.
  2. Evaluate the data to make the following determinations:
    - a. What is the actual and optimum number of days required to pay funds under the recipient's systems?
    - b. Do significant trends exist or are they developing?

- c. Are there any procedures under the recipient's control which should be corrected or streamlined?
  - d. Are there any procedures not under the recipient's control which can be streamlined?
3. The awarding office will report the review findings:
- a. Write a report explaining and justifying the office's findings and recommendations and/or determinations about the recipient's systems and file the report adequate supporting documentation in the official assistance agreement file.
  - b. Present the results of the review to the recipient. If necessary, the awarding office will work with the recipient to resolve any issues or recommendations.

### **1-160-70 Level II Drawdown Review**

- A. OSMRE's awarding office will review the minimum number of cash requests and payments required to determine whether there have been any changes in the payment practices or timeframes established in the Level I review.
- B. Determine whether the recipient is requesting cash payments on an advance or reimbursement basis. If it is found that the recipient continues to operate on a reimbursement basis, then the review is complete.
- C. If the recipient is requesting cash advances, OSMRE will determine whether the recipient's system continues to meet the timeliness standard for paying out Federal funds. If it is found the recipient continues to pay out Federal funds timely, then the review is complete.
- D. If there have been significant changes in the recipient's systems, OSMRE will conduct a Level I review or other review steps as necessary to determine the systems are in compliance.
- E. OSMRE will complete and document the review.
  - 1. If the review raised any issues or concerns, the awarding office will work with the recipient to resolve the findings.
  - 2. The awarding office will file the review and any supporting documentation in its official assistance agreement file.

## **1-160-80 Resolutions from the Drawdown Review**

- A. The awarding office will address and resolve any issues discovered in drawdown reviews. OSMRE may use one of the following approaches for resolving problems:
  - 1. Collect all necessary information. Document the critical time path and identify the most problematic points in the process. Determine the scope and extent of the problem. Identify any changes in the grantee's systems, procedures, or internal controls, or in key personnel which may have contributed to the problem. If additional information is needed, perform further review procedures.
  - 2. Develop suggestions for resolution of issues.
  - 3. Present suggestions to recipient and work together to consider mechanisms or improvements within recipient's systems to address the issues.
  - 4. Develop an agreement with actions and a schedule for resolving these issues.
  
- B. The awarding office must document any resolution agreement. OSMRE will conduct follow-up reviews as necessary to ensure changes and improvements are being made and the problem has been resolved.

## **CHAPTER 1-170 OVERDUE REPORTS**

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- 1-170-00 Purpose
- 1-170-10 Policy for Reporting Requirements
- 1-170-20 Requesting an Extension or Waiver
- 1-170-30 Overdue Report
- 1-170-40 Actions OSMRE Will Take if Missing Report is Not Received
- 1-170-50 Alternatives to Suspension or Termination

### **1-170-00 Purpose**

The purpose of this chapter is to explain the actions the Office of Surface Mining Reclamation and Enforcement (OSMRE) will take if the required reports are not received for an assistance agreement.

### **1-170-10 Policy for Reporting Requirements**

- A. The reporting requirement is a key condition of a grant or cooperative agreement.
  - 1. The list of the reports and due dates required under the agreement are written on the award document for a recipient's assistance agreement (NOA).
  - 2. To see further information regarding report requirements for specific programs, please see chapter 4-230 of this manual for AML agreements; 5-230 for Regulatory program agreements; 6-100 for WCAP, 6-110 for AS, 6-120 for MDTI, and 6-130 for Youth agreements.
- B. As a condition of all OSMRE assistance agreements, any subsequent assistance awards or amendments may be affected if all overdue financial or performance reports have not been received.

### **1-170-20 Requesting an Extension or Waiver**

- A. OSMRE may extend a report deadline only if the recipient sends a written request with adequate justification before the scheduled due date. The request must explain why the extension is needed and propose a new due date for the report. The revised due date will be entered into the grant tracking system and the request will be filed along with the response in the official assistance agreement file.
- B. Per [2 CFR 200.329](#), OSMRE may waive a required report only if the recipient sends a written request with adequate justification before the scheduled due date. To waive a required report, the awarding office must be able to determine another way for the information to be accomplished. If a reporting requirement is waived, the awarding



office will notify the recipient.

### **1-170-30 Overdue Report**

- A. If required reports are not received by the due date, the awarding office will reach out to the recipient.
  - 1. OSMRE will notify the recipient the due date has passed and the required report(s) have not been received.
  - 2. Failure to submit reports on time violates the terms of the assistance agreement. Noncompliance may result in sanctions including withholding cash payments, disallowing current expenditures, suspending or terminating part or the entire current award, not awarding further grants for the program, or other legal remedies.
  - 3. The awarding office will request the missing report be sent immediately and will negotiate a proposed extension not to exceed 30 calendar days.
- B. OSMRE must confirm all agreements about overdue reports in writing. This confirmation will state the approved extended due date for the report. It will also remind the recipient of the sanctions, which may be imposed for noncompliance if either the report or an acceptable explanation by the new due date is not received. Exhibit 1 of this chapter is a sample confirmation document.

### **1-170-40 Actions OSMRE Will Take if Missing Report is Not Received**

- A. If either the report or an acceptable explanation by the agreed-upon extended due date is not received, the awarding office will issue a written warning stating the recipient is noncompliant with the reporting requirements of the assistance agreement. The notice will state unless the required reports are received within the next 10 calendar days, no further payments will be made and the award will be suspended until all required reports are received, and the suspension may be converted to a termination 30 days later. This notice will also state no further grant awards will be made until all overdue reports are received. Exhibit 2 of this chapter is a sample warning notice.
- B. If the report or an acceptable explanation is not received by the end of the 10-calendar day period cited in the notice, the awarding office will coordinate with the Assistant Directors for Finance and Acquisition (AD-F&A) and for Program Support (AD-PS) to suspend the grant award and payments. This will withhold further grant awards until all delinquent reports have been received. Division of Financial Management (DFM) will ensure no payments are made and the awarding office and AD-PS are informed of actions taken.
- C. If the report or an acceptable explanation is not received by the end of 30 calendar days

after the suspension, the suspension will convert to a termination. See Chapter 2-280 of this manual for more information on enforcement and termination actions.

**1-170-50 Alternatives to Suspension or Termination**

- A. Regional Directors may waive suspension or termination of a grant agreement for noncompliance with reporting requirements with a written determination stating it is in the best interests of OSMRE to continue the program.
- B. It is strongly encouraged to work with the awarding office before the end of the report extension period to ensure the report is submitted or an appropriate explanation is provided and accepted, in order to avoid the suspension and termination provisions.

## EXHIBIT 1

### Sample Confirmation of Extended Report Due Date

Dear \_\_\_\_\_:

This is to confirm our telephone conversation of \_\_\_\_\_. It outlines the agreement we reached for the submission of the following delinquent report(s):

Grant No.:

Report Description: [*Financial Report and/or Performance Report*]

Report Due for Period:

As you are aware, these reports were due to OSMRE on \_\_\_\_\_.

Acceptance of a grant or cooperative agreement award carries with it the obligation for proper and timely accountability, both programmatic and fiscal. Please be aware that failure to submit required reports in a timely manner makes your organization noncompliant. This may result in the imposition of sanctions including (a) withholding cash payments pending receipt of the required reports; (b) denying authority to commit Federal or matching funds for this program; (c) suspension or termination of part or all of this grant award; (d) withholding further awards for this program until the required reports are received; or other legal remedies.

In keeping with the understanding reached in our telephone conversation, we will expect to receive the overdue report(s) by \_\_\_\_\_.

If you are unable to meet the agreed deadline, it is imperative you inform us as soon as possible of the reasons why you are unable to meet the deadline and when you will submit the report.

If you have any questions regarding this matter, or if I can be of assistance in expediting the submission of the report, please do not hesitate to contact me at ( )\_\_\_\_\_.

Sincerely,

Awarding Office Official

## EXHIBIT 2

### Sample Warning Notice to Recipient

Dear \_\_\_\_\_:

The following grant reports are seriously overdue:

Grant No:

Report Description: *[Financial Report and/or Performance Report]*

Report Period:

This letter is to warn you that your organization is noncompliant with the reporting requirements of the assistance agreement. The reports were originally due on \_\_\_\_\_. My previous letter dated \_\_\_\_\_ confirmed our agreement by telephone to extend the due date to \_\_\_\_\_. The reports have not been received in this office.

Unless the reports listed above are received by \_\_\_\_\_ *[within the next 10 calendar days]*, OSMRE will make no further payments and the grant award will be suspended until all required reports are received. The grant suspension may be converted to a termination on \_\_\_\_\_ *[30 days after the suspension]*. No further grant awards will be made by OSMRE until all overdue reports have been received.

Should you or your staff have any questions regarding this matter, or if we can be of assistance in expediting receipt of the reports, please do not hesitate to contact me. If a site visit by me or my staff would be helpful, we would be pleased to come.

Sincerely,

Awarding Office Official

cc: DFM

## CHAPTER 1-180

### AUDIT RESOLUTION AND COST DISALLOWANCES

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- 1-180-00 Purpose
- 1-180-10 Audits and Reviews
- 1-180-20 Resolving a Primary Emphasis in an Audit
- 1-180-30 Developing an Audit Resolution
- 1-180-40 Audit Decision
- 1-180-50 Appealing the Audit Decision

#### **1-180-00 Purpose**

The purpose of this chapter is to provide an overview of the policies and procedures for resolving audit findings related to assistance agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). It also describes how to evaluate audit cost disallowances based on projecting audit findings to time periods not specifically examined by the auditors.

#### **1-180-10 Audits and Reviews**

- A. The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, at [2 CFR Part 200 Subpart F](#), provides requirements for audits. Audit issues for assistance agreements normally come from the single audit process through the cognizant Federal agency, the lead Federal agency working with the organization. The procedures in this chapter aim to resolve single audit issues.
- B. These procedures also apply to issues raised by other audits, such as the Government Accountability Office or the Department of the Interior Inspector General's Office. They also apply to other financial or management reviews of the assistance agreements with findings or recommendations that must be resolved.

#### **1-180-20 Resolving a Primary Emphasis in an Audit**

- A. When auditors report deficiencies in an organization with which OSMRE has a continuing relationship, the primary emphasis is to ensure the deficiencies are adequately corrected. OSMRE must ensure the deficiencies will not occur again under this agreement or any future assistance agreements.
- B. If costs are disallowed, OSMRE will limit the disallowance to costs incurred during the organization's three fiscal years immediately preceding the starting date of the audit and subsequent periods up to the date the deficiencies are corrected.

For example, if an audit of a grant for the period July 1, 2022, through June 30, 2023, found

deficiencies in a recipient's management system and questioned cost amounts based on extending the findings to earlier or later grants, then OSMRE would limit the disallowed costs as follows:

Date audit started:	December 12, 2023
Organization's three previous fiscal years:	July 1, 2020, through June 30, 2023
Date deficiencies corrected:	July 1, 2024
Limitation on cost disallowances:	July 1, 2020, through June 30, 2024

### **1-180-30 Developing an Audit Resolution**

- A. All audits must be resolved in a timely and proper manner. The awarding office will resolve audits within 60 calendar days of receipt. The 60-day period allows 30 days for the recipient to respond to the audit findings. In the remaining 30 days, OSMRE will review the recipient's response, develop an appropriate resolution of the issue, approve the resolution, and inform the recipient and the necessary agency officials.
  
- B. The awarding office receives the audit report from the Federal Audit Clearinghouse for review and resolution.
  - 1. Normally, the Department of the Interior Office of Inspector General (DOI-OIG) receives an audit report from the recipient's cognizant Federal agency or from the auditors. DOI forwards the audit to OSMRE's Office of Planning, Analysis and Budget (OPAB).
  - 2. OPAB reviews the report and forwards it to the appropriate Regional Director (RD) for review. If there are any issues to resolve, OPAB enters the report into OSMRE's audit tracking system.
  - 3. The RD forwards the audit report to the grants specialist who works with that recipient. The grants specialist must review the report. If there are no issues to resolve, the awarding office does not need to take any further action on the audit.
  
- C. OSMRE may request a response to the audit findings:
  - 1. A Grant Management Specialist will prepare a written request asking the recipient to respond to the audit findings. The request must include a summary of the findings to be resolved and a copy of the relevant portion of the audit report. The recipient's response is due back 30 days after the request is received. OSMRE's request should be signed or approved by the official authorized to approve the recipient's assistance award. GMS must confirm the date the recipient receives the letter through email, a documented telephone conversation, or other means. GMS will keep in contact throughout the 30-day response period and provide technical assistance as needed.
  - 2. Recipient may request an extension to the 30-day response deadline. The

request must be fully justified with an explanation of the unusual circumstances which prevent a timely response. This request must also include a schedule for the final response.

3. OSMRE's awarding office may choose to approve or disapprove the extension request. If approval will delay resolution of the audit beyond the 60-day period, the GMS must notify OPAB of the reason for the extension and the new audit resolution due date.

D. Recipient will respond to the audit findings in writing:

1. The recipient's audit response must state whether they concur or disagree with each finding or recommendation. If they select concur, they should specify how and when they will implement corrections and system changes. If they concur that questioned costs should be disallowed, the recipient must specify when they will pay back the funds for the disallowed costs.
2. If the recipient disagrees with a finding or recommendation or questioned cost, they should justify their position and offer any alternative information or supporting documentation. The recipient should send the response to the designated GMS.

E. If the recipient does not respond within the 30-day deadline, the GMS may proceed based on the available information to recommend resolution actions and prepare the decision letter to be signed by an OSMRE authorized official.

F. OSMRE will review the recipient's response:

1. In evaluating the recipient's response, the standard OSMRE will apply is whether the costs are allowable, documented, reasonable, and justified. Factors such as the good faith of the organization, successful accomplishment of program objectives, or recipient's ignorance of requirements should not be used as a basis for allowing costs which are unallowable. The awarding office is not authorized to waive collection of unallowable costs (see [2 CFR § 200.420](#) Considerations for selected items of cost).
2. The auditor's findings may have been based on estimates or statistical sampling of a few documents with the findings projected to the total population. If the recipient presents an alternative sampling methodology or analysis, OSMRE may choose to accept it.
3. If the auditor questioned costs because the recipient failed to request advance agency approval, but OSMRE would have approved the action if it had been requested, the official who would have approved the request may allow the questioned costs.

4. If the information the recipient submits is inadequate or inconclusive, the GMS may recommend disallowance of the entire questioned amount. Alternatively, the GMS may work with the recipient to obtain more information.
- G. OSMRE may have meetings and discussions with the recipient before audit decisions are made:
1. If the recipient's response is inadequate, the GMS may request additional information or a revised response. Alternatively, the GMS or other staff may perform an on-site review of the recipient's records to acquire the needed information. However, the requirement for timely resolution of audits still applies. If these actions will result in a delay of audit resolution beyond the 60-day period, the GMS must notify OPAB of the reason for the delay and the new audit resolution due date.
  2. OSMRE officials may need to meet with the recipient's officials to develop acceptable actions and schedules to resolve audit concerns or to design changes needed in procedures and systems. Written meeting notes must be kept. The decision letter resolving the audit must include agreements developed in these meetings.
  3. The awarding office may have found that it is best to get the recipient's concurrence with all aspects of a proposed resolution before OSMRE makes a decision. When possible, the awarding office will discuss any plan to require changes in the recipient's processes or systems before they are included in the audit decision.
  4. If the awarding office decides to disallow costs, the awarding office will discuss with the recipient how they will pay them. If appropriate, OSMRE will meet with the recipient either before or after issuance of the decision letter to negotiate an extended payment plan for disallowed costs.

#### **1-180-40 Audit Decision**

- A. After full consideration of the recipient's responses and other pertinent information obtained, the GMS will recommend whether to allow any questioned costs and what corrective actions will require to resolve administrative findings. The official authorized to approve the recipient's assistance agreements must approve the resolution.
- B. OSMRE will document the audit decision and prepare a transmittal to send to the recipient.
  1. The awarding office will use the Audit Decision Form Exhibit 1 of this chapter to document all decisions made to resolve the audit. Both the GMS and the official authorized to approve OSMRE's assistance awards must approve the form. For each finding, the form will accomplish the following:



- a. Summarize the initial audit report finding.
  - b. Summarize the recipient's response.
  - c. Discuss other pertinent factors.
  - d. State the final decision.
  - e. State corrective actions to be taken by the recipient and include the schedule to implement them.
  - f. Identify any follow-up reviews or actions OSMRE will be doing.
  - g. Identify total disallowed costs and include a plan for collecting them.
2. OSMRE will use a transmittal document to send the Audit Decision Form to the recipient. Exhibit 2 of this chapter is an outline of a sample letter. The transmittal is prepared by the GMS and approved by the official authorized to approve the recipient's assistance awards. OSMRE's transmittal will accomplish the following:
- a. Identify the audit number.
  - b. Refer to the attached Audit Decision Form.
  - c. Specify payment procedure, address, and due date for any amounts owed. The due date should be 30 days after recipient's receipt of the decision.
  - d. Identify any revised cost reports recipient must submit.
  - e. Summarize the appeal procedures recipient may use.
  - f. State the resolution is final unless questioned by DOI OIG.
  - g. Identify an OSMRE contact for further assistance.
- C. OSMRE will distribute the Audit Decision Form and approved cover letter as follows:
1. Send the approved Audit Decision Form and transmittal to the recipient. GMS will confirm the date recipient receives them.
  2. Send the Audit Decision Form and transmittal to OPAB. They will send it to DOI-OIG for final approval of the resolution.
  3. If OSMRE must collect any disallowed costs, the awarding office will send the transmittal to the DFM for further action.
  4. File the approved Audit Decision Form and transmittal in the awarding office. It should be filed in the audit resolution file as well as in the official file for each assistance agreement affected.
- D. If OSMRE disallows any costs, the awarding office will develop a written agreement with the recipient confirming the payment plan that is included with the Audit Decision Form. Authorized officials of the recipient's organization and the awarding office must sign or approve the payment agreement. OSMRE must send a copy of the approved payment plan to DFM for collection. DFM will initiate collection proceedings according

to the payment plan.

- E. If the audit decision calls for a follow-up review to confirm corrective actions have been implemented, the GMS should schedule and perform the review as soon as feasible for the review topic. The GMS must notify the official authorized to sign OSMRE's assistance awards and OPAB of the results of the follow-up review.
- F. Upon repayment of all identified disallowed costs and implementation of all required corrective actions, the awarding office must notify the recipient and OPAB the audit resolution is complete. OPAB must close out the audit in the audit tracking system.

### **1-180-50 Appealing the Audit Decision**

- A. If the recipient does not concur with the awarding office's decision on an audit finding, whether fiscal, or administrative, the recipient may appeal the decision to the RD of the appropriate region.
  - 1. Recipient must send a formal appeal letter within 30 days after the awarding office decision has been received. The appeal must include the reasons for contesting the audit decision and all information necessary for review of the appeal.
  - 2. OSMRE's RD should assign a coordinator for the audit appeal process. The coordinator should not have been involved in the initial decisions being appealed.
  - 3. The coordinator must provide the recipient with written confirmation OSMRE has received the recipient's appeal letter within three days of receipt.
  - 4. If recipient is appealing disallowed costs, the coordinator must notify DFM the recipient has filed an appeal. DFM will suspend collection procedures during the appeal, but late charges will continue to accrue.
  - 5. The coordinator should obtain comments on the appeal from the GMS, OSMRE's authorized official who signed the initial audit decision, and from all other interested parties. The coordinator will provide to the RD all information needed to decide the appeal.
  - 6. The RD will make an initial decision on the appeal within 30 days of receiving the recipient's appeal. OSMRE will not send this initial decision to the recipient. OPAB must concur with the decision before it becomes final. OSMRE should complete this coordination and review process within 30 days. The final decision is due to the recipient within 60 days of receiving the recipient's appeal.

7. If OSMRE cannot issue the final decision within 60 days of receiving the recipient's appeal, the appeal coordinator will notify the recipient and OPAB of the reason for the delay and the revised decision date.
- B. If the recipient does not agree with the appeal decision, they may appeal the decision to the Director of OSMRE for final resolution.

## Exhibit 1

### Audit Decision Form

1. Audit Control Number:
2. Recipient:
3. Audit findings resolved: *(For each audit finding resolved, show the finding number, the agreement number(s), the original finding, the amount of costs questioned, the recipient's response, the resolution decision, and the amount of costs disallowed. Use space "A" below for the first finding resolved and add another letter for each additional finding. Expand this section or use additional pages as needed.)*

A.

4. Total amount of costs disallowed: \$  
Collection plan: *(Fully describe all elements of plan, including schedule for payment(s).)*

5. Approvals

Grants Specialist:

\_\_\_\_\_  
Signature                      Date

Authorized Approving Official:

\_\_\_\_\_  
Signature                      Date

## Exhibit 2

### Sample Decision Transmittal to Recipient

Dear:

The purpose of this letter is to inform you of our resolution of the Single Audit of the State of \_\_\_\_\_, for the period ending \_\_\_\_\_, dated \_\_\_\_\_.

Enclosed is the Audit Decision Form detailing the resolution of each audit finding relating to the OSMRE assistance agreements.

The disallowed costs resulting from this audit total \$\_\_\_\_. Please send a check in this amount payable to the Office of Surface Mining Reclamation and Enforcement to the following address by no later than \_\_\_[date]\_\_. If payment is not received by OSMRE prior to this date, interest charges will begin.

[grants specialist or payment address]

Please prepare revised [final] cost reports for agreements \_\_\_[numbers]\_\_, and send them to the following address by no later than \_\_\_[date]\_\_.

[report address]

If you wish to appeal any of these decisions, an appeal letter must be sent to the following address by \_\_\_[due date]\_\_.

Director, Regional Office  
[address]

You may consider this resolution to be final unless notified otherwise by this office. If the Department of the Interior, Office of Inspector General questions any of these decisions, we may reopen the audit resolution

If you have any questions or we may be of any assistance, contact \_\_\_[grant specialist]\_\_ at \_\_\_\_\_.

Thank you for your assistance with this audit resolution.

Sincerely,  
[Official authorized to approve agreements]

# **Annex E: FFAM Part 2 - General Requirements for Financial Assistance**

## **CHAPTER 2-100 USING CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS**

### **Table of Contents**

- 2-100-00 Purpose
- 2-100-10 Regulations
- 2-100-20 Selecting a Contract, Grant, or Cooperative Agreement
- 2-100-30 Difference between Procurement and Assistance
- 2-100-40 Contracts
- 2-100-50 Grants and Cooperative Agreements
- 2-100-60 OSMRE's Substantial Involvement during Program Performance
- 2-100-70 Determining between a Contract, Grant, or Cooperative Agreement
- 2-100-80 Awarding an Assistance Agreement to a Single Source without Competition

### **2-100-00 Purpose**

- A. The purpose of this chapter is to explain how the Office of Surface Mining Reclamation and Enforcement (OSMRE) determines whether to use a contract, a grant, or a cooperative agreement to award Federal funds.
- B. This chapter also defines procurement and assistance and explains the differences between them.
- C. This chapter does not cover intra-agency, interagency agreements, or memoranda of understanding. Also, it does not apply to licenses, sale documents, leases, and special use permits unless they are for purposes of public support or stimulation.

### **2-100-10 Regulations**

The Federal Grant and Cooperative Agreement Act of 1977, as amended ([31 USC 6303](#)) establishes the distinctions between Federal assistance relationships, and Federal procurement relationships.

### **2-100-20 Selecting a Contract, Grant, or Cooperative Agreement**

Federal law establishes different legal requirements for procurement and assistance relationships. If OSMRE selects the wrong instrument, the bureau will be in violation of the law. Department of Interior Inspector General audits have repeatedly found serious problems with misuse of contracts, grants, and cooperative agreements. OSMRE offices must select the appropriate type of agreement.

## **2-100-30 Difference between Procurement and Assistance**

- A. The main purpose of a procurement action is to acquire property or services by purchase, lease, or barter for the use or direct benefit of the Federal government. OSMRE uses a contract as the legal instrument to award a procurement action.
- B. The main purpose of an assistance action is to transfer money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation. The agency must have legal authority to award assistance agreements for this purpose. OSMRE will use either grants or cooperative agreements to award assistance funds.

## **2-100-40 Contracts**

- A. OSMRE must use a procurement contract when the main purpose is to get services or property by purchase, lease, or barter for use or direct benefit.
- B. A contract may be used in a specific instance if it is determined that an emergency project contract is appropriate. This allows OSMRE to determine when to satisfy specific public needs best by using the procurement process. However, OSMRE cannot use this provision to circumvent the legal requirements for use of procurement or assistance instruments. This authority must be used only in extraordinary circumstances with the approval of the Assistant Director, Program Support (AD-PS) in coordination with the Assistant Director, Finance and Acquisition (AD-F&A).
- C. OSMRE would normally use contracts for the following purposes:
  - 1. Assess the performance of Federal programs or projects or recipient activity. This does not include research of an evaluative character unless the awarding office initiates the request for its performance.
  - 2. Provide professional or technical support services for OSMRE or any third party. This does not include services rendered by a state or local government, Tribe, or professional group to its own constituency or members.
  - 3. Conduct surveys, studies, and research to provide specific information for OSMRE use or for public release.
  - 4. Conduct training to select the individuals or groups to be trained or specify the content of the curriculum (not applicable to fellowship awards).
  - 5. Publish or produce materials in any media, except for the results of research projects, or the proceedings of scientific conferences, which are not for OSMRE use.

6. Design or produce items for OSMRE use or subject to the bureau's specifications.
7. Conduct conferences on behalf of OSMRE.
8. To develop plans, manage information, or other data for OSMRE use.

## **2-100-50 Grants and Cooperative Agreements**

- A. OSMRE will normally use grants or cooperative agreements for the following purposes:
  1. General financial assistance to eligible recipients for a public purpose of support or stimulation under specific authorizing legislation.
  2. Financial assistance for a public purpose to a specific program activity eligible for such assistance under specific authorizing legislation.
- B. A grant is used when no substantial involvement is anticipated between OSMRE and the recipient during the performance of the proposed assistance activities.
- C. A cooperative agreement is used when substantial involvement is anticipated between OSMRE and the recipient during program performance.
- D. The awarding office will decide whether to use a cooperative agreement or a grant for a specific award based on the need for OSMRE to have substantial programmatic involvement in the activity.
- E. Some programs require the use of cooperative agreements exclusively, such as the programs listed in Chapter 6 of this manual. This determination is made for the entire program based on statutory requirements or policy level determinations that program performance will require substantial Federal programmatic involvement. Other programs may use a mix of grants and cooperative agreements, depending on the nature of the project or the abilities of the recipient. For example, a project may start with a cooperative agreement but use grants in later years if the project no longer needs OSMRE's substantial involvement.

## **2-100-60 OSMRE's Substantial Involvement during Program Performance**

- A. OSMRE may consider the following activities as substantial involvement in program performance, depending on the specific circumstances:
  1. May halt an activity immediately (for example, if construction specifications are not met).
  2. Requiring the recipient to get prior approval of one stage of program activity prior to beginning work on a subsequent stage.



3. Approving or helping the recipient select contracts or subgrants awarded under the assistance agreement.
  4. Helping the recipient select their key personnel. However, a research project that requires the participation of a named principal investigator would not by itself justify use of a cooperative agreement.
  5. Collaborating or participating jointly with the recipient to perform the program activities.
  6. Monitoring performance to provide specific direction or redirection of the work.
  7. Setting requirements before the award limiting recipient's discretion over the scope of services offered, organizational structure, staffing, mode of operation, and other management processes. Closely monitoring or working with the recipient to ensure compliance with these requirements beyond the exercise of normal Federal stewardship.
- B. OSMRE does not consider the following activities to be substantial involvement in program performance:
1. Approving recipient's plans before the agreement is awarded.
  2. Performing normal Federal stewardship responsibilities during performance to ensure that the objectives, along with the terms and conditions of the award are accomplished. This could include site visits, and reviewing and responding to recipient's program, financial, and audit reports.
  3. Reviewing performance after the project is completed.
  4. Enforcing legal requirements such as civil rights, environmental protection, and provisions for the disabled.
  5. Enforcing general fiscal and administrative requirements such as those included in OMB regulations.
  6. Becoming more involved than expected because of problems in recipient's program or financial performance.
- C. OSMRE does not consider providing technical assistance, advice, or guidance to the recipient as substantial involvement during performance, if any of the following conditions are met:
1. Provide the assistance at recipient's request.

2. Advises recipient but does not require them to follow said advice.
3. Require recipient to follow OSMRE guidance, but it is provided before the project starts and the awarding office informed the recipient of this requirement before the agreement was awarded.

## **2-100-70 Determining between a Contract, Grant, or Cooperative Agreement**

- A. Any program announcement, public notice, solicitation, or request for applications or proposals must show whether the relationship will be procurement or assistance and whether the agreement will be a contract, grant, or cooperative agreement. For cooperative agreements, the announcement must include an explicit statement of the anticipated Federal programmatic involvement.
- B. Decisions on whether to use a contract, grant, or cooperative agreement must be justified and documented in the official file. Written determinations must contain complete information on the nature of the relationship between OSMRE and the recipient to justify the selection of the award instrument.
- C. If major individual transactions or programs contain elements of both procurement and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other, the awarding office should seek initial guidance from the AD-PS.
- D. OSMRE will request guidance from the Office of the Solicitor as needed. Upon request, the Solicitor may review new programs or policies, or a proposed cooperative agreement or grant which is of such complexity or novelty that it raises issues justifying legal review. Cooperative agreements and grant awards issued under well-established programs should not require Solicitor review.

## **2-100-80 Awarding an Assistance Agreement to a Single Source without Competition**

- A. A funding opportunity may be specifically directed to a single known recipient. This single source recipient may either be named in legislation or determined by OSMRE based on demonstrable criteria such as unique expertise or capacity.
- B. OSMRE rarely awards Federal funds in a single source assistance agreement with no competition. If it is decided to make a single source award, the decision must be able to withstand scrutiny. OSMRE must demonstrate in the award file that the award protects the public interest and is in accordance with legal requirements and OSMRE priorities and objectives.
- C. An award without competition must fit one or more of the following standards:
  1. Legislative intent, demonstrated in law or legislative history, clearly indicating Congress' intent to restrict award to a particular recipient or purpose.
  2. An unsolicited proposal, representing a unique or innovative idea, method, or

approach, not the subject of a current or planned assistance award, which will benefit program objectives.

3. A continuation or completion of an activity presently being funded if competition would significantly harm the activity.
  4. A uniquely qualified applicant for the activity to be performed based upon demonstrable factors such as technical expertise, location, voluntary support capacity, cost-sharing ability, or other unique qualifications.
  5. An urgent situation with insufficient time available for competitive procedures, due to a substantial danger to health or safety or a compelling and unusual urgency
- D. OSMRE must complete the following actions before awarding a single source award for \$25,000 or more (DOI Chapter 2 Department Manual 505 DM2).
1. Announce a notice of intent to make the award. The announcement may be published on [Grants.gov](https://www.grants.gov), the *Federal Register*, or any medium which will provide transparency. Only discretionary NOFOs must have synopsis posted to grants.gov.
  2. Put a written justification in the award file explaining why competition is not practicable, including a statement of which of the above criteria apply and why.

## **CHAPTER 2-110 DEBARMENT AND SUSPENSION**

### **Table of Contents**

- 2-110-00 Purpose
- 2-110-10 Debarring Persons or Entities
- 2-110-20 System for Award Management (SAM)
- 2-110-30 Ensuring Applicant Eligibility
- 2-110-40 Responsibility as a Recipient
- 2-110-50 Debarments and Suspensions

### **2-110-00 Purpose**

The purpose of this chapter is to describe the debarment and suspension procedures. Debarment is an action taken by a Federal agency to exclude a person from participating in Federal procurement or non-procurement transactions.

1. A Federal grant or cooperative agreement is considered a non-procurement transaction.
2. A primary transaction is between the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the recipient of the assistance agreement. Lower tier transactions are between the recipient and any other entity, including all contracts and subgrants. A person or entity who is debarred cannot participate in either primary or lower tier transactions.

Suspension is a Federal action which temporarily halts operations under an assistance agreement because of a problem. Suspension allows time for corrective action by the recipient or the Federal agency's decision to terminate the agreement.

### **2-110-10 Debarring Persons or Entities**

A Federal agency may debar a person or entity for any of the following reasons:

- A. A conviction or civil judgment for fraud, criminal offenses, violation of antitrust statutes, embezzlement, theft, forgery, bribery, falsification of records, false claims, obstruction of justice or other offenses that indicate a lack of business integrity or honesty.
- B. A serious violation of a public agreement that affects the integrity of an agency program, such as a willful failure to perform, history of substantial non-compliance, or willful violation of statutory or regulatory provisions.
- C. Any other cause of so serious or compelling a nature that it affects the participant's present responsibility, including knowingly doing business with an excluded person, or failure to pay a substantial debt owed to a Federal agency, or violation of the Drug-Free

Workplace Act.

## **2-110-20 System for Award Management (SAM)**

The [System for Award Management \(SAM\)](#) is the Official U.S Government system that consolidated several independent systems used in procurement and financial assistance for evaluating the financial worthiness of a contractor or recipient. SAM is a widely available source of the most current information about persons or entities who are excluded or disqualified from transactions with the Federal government. Federal agencies and recipients may use SAM to search for this information. The General Services Administration (GSA) maintains the system.

## **2-110-30 Ensuring Applicant Eligibility**

- A. OSMRE will not award financial assistance to applicants that are debarred or suspended or otherwise excluded from or ineligible for Federal financial assistance.
- B. The awarding office must check SAM to determine whether a participant or principal is excluded before the authorized official approves any grant or cooperative agreement.
- C. SAM is the Official U.S. Government System for:
  - a. Contract Opportunities
  - b. Contract Data (Reports only from fpds.gov)
  - c. Wage Determinations
  - d. Federal Hierarchy Departments and Sub tiers
  - e. Assistance Listings
  - f. Entity Information: Entities, Disaster Response Registry, Exclusions, and Responsibility/Qualification (formerly FAPIIS)
  - g. Entity Reporting and BIO-Preferred Reporting

## **2-110-40 Responsibility as a Recipient**

- A. Recipients must determine whether any of their own principals are excluded or disqualified. They must also determine if another person or persons at the next lower tier, with whom they intend to do business with, is excluded or disqualified (subcontractors/subrecipient). Recipients can make this determination in the following ways:
  - 1. Check SAM.
  - 2. Must have a clause (flow down provision) or condition to the transaction agreement with that person.
- B. Recipient must inform the authorized official at the awarding office if at any time they learn that any certifications included in the original application package were incorrect when submitted or

have since become incorrect.

- C. Recipients must inform grants staff as soon as key personnel changes are made that may affect the assistance agreement.
- D. Recipients must check SAM to determine whether a subrecipient or subcontractor is excluded before the recipient approves of any subawards or subcontracts, as well as periodically.

## **2-110-50 Debarments and Suspensions**

- A. OSMRE will initiate action when there is adequate evidence to suspect that one of the causes for debarment or suspension has occurred. For example, an indictment is sufficient grounds for initiating a suspension.
- B. OSMRE will use the following process to initiate debarment or suspension actions:
  - 1. The awarding office must investigate and document information concerning the existence of a cause for debarment. The awarding office must forward its findings and recommendations to the AD-PS.
  - 2. The AD-PS will review the information and determine if the recommended action is appropriate. The AD-PS will forward the information to the Interior Department Office of Acquisition and Property Management for action (DOI-AAAP-0056 Ver. 2).
  - 3. The DOI Debarring/Suspending Official will process the debarment action as appropriate. See [2 CFR Part 180](#) for more information.
  - 4. This will be done on a case-by-case basis and through the appropriate channels. OSMRE will initiate suspension or debarment proceedings as authorized under 2 CFR Part 180.

## **CHAPTER 2-120 DRUG-FREE WORKPLACE REQUIREMENTS**

### **Table of Contents**

- 2-120-00 Purpose
- 2-120-10 Transactional Application
- 2-120-20 Drug-Free Workplace Compliance
- 2-120-30 Determining Drug-Free Workplace Violations
- 2-120-40 OSMRE's Actions When Violation is Present

### **2-120-00 Purpose**

The purpose of this chapter is to explain the government-wide, Department of the Interior, and Office of Surface Mining Reclamation and Enforcement (OSMRE) policies and procedures for compliance with the Drug-Free Workplace Act of 1988.

### **2-120-10 Transactional Application**

These requirements apply to all the financial assistance agreements awarded by OSMRE. These requirements do not apply to contracts and subgrants awarded by the recipient of an OSMRE grant or cooperative agreement. However, in some cases state laws may require drug-free workplace policies for employers within the state.

### **2-120-20 Drug-Free Workplace Compliance**

- A. Recipients must make a good faith effort on a continuing basis to maintain a drug-free workplace. They must agree to do so as a condition for receiving financial assistance. Below are three general requirements that should be part of this effort:
  - 1. Publish a drug-free workplace statement that tells employees that unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. The statement must specify the actions that will take place against employees for violating that prohibition. The statement must also inform employees that, as a condition of employment under any award, they must abide by the terms of the drug-free statement and must notify their employer, in writing, if ever convicted for a violation of a criminal drug statute occurring in the workplace. Recipients must give a copy of this statement to all employees working under an assistance agreement.
  - 2. Establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties for drug abuse violations occurring in the workplace. Recipients are not required to provide or pay for drug rehabilitation programs.
  - 3. Identify all known workplaces under organization's Federal awards.

- B. Include in the drug-free workplace policy a requirement that employees notify their employer of any criminal drug statute conviction for a violation occurring in the workplace within five calendar days. Recipients must notify OSMRE in writing within ten days after receiving notice of such a conviction. Within 30 days of notice of an employee's conviction for a drug violation in the workplace, recipients must take one of the following actions:
  - 1. Take appropriate personnel action against the employee, up to and including termination.
  - 2. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program that is approved by a Federal, state, or local health, law enforcement or another appropriate agency.

### **2-120-30 Determining Drug-Free Workplace Violations**

Recipients will be in violation of the drug-free workplace requirements if OSMRE finds that any of the following circumstances have occurred:

- A. Violated these requirements.
- B. The number of convictions of organization's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

### **2-120-40 OSMRE's Actions When Violation is Present**

If the awarding office determines that the recipient is in violation of the drug-free workplace requirements, then OSMRE may take one or more of the following actions:

- A. Suspend payments under the award.
- B. Suspend or terminate the award.
- C. Suspend or debar the recipient from all Federal transactions for a period not to exceed five years. See chapter 2-110 of this manual for more information on debarment and suspension actions.



## **CHAPTER 2-130 LOBBYING**

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- 2-130-10 Objectives
- 2-130-20 Policy
- 2-130-30 Exceptions
- 2-130-40 Federal Funds and Lobbying
- 2-130-50 Required Certifications and Disclosures
- 2-130-60 Penalties for Violation
- 2-130-70 Certification Filing

### **2-130-00 Purpose**

The purpose of this chapter is to define lobbying and how it relates to Federal funds. Lobbying is the practice of attempting to influence decisions made by the government.

### **2-130-10 Objectives**

This chapter outlines government-wide, Department of the Interior, and Office of Surface Mining Reclamation and Enforcement (OSMRE) policies to restrict lobbying.

### **2-130-20 Policy**

The anti-lobbying restrictions were established by the 1990 Department of the Interior and Related Agencies Appropriations Act, and subsequently amended by the Lobbying Disclosure Act of 1995. The Department of the Interior's regulations at [43 CFR Part 18](#) provides a detailed description of these requirements.

### **2-130-30 Exceptions**

- A. These rules do not apply to grants or cooperative agreements with less than \$100,000 in Federal funds.
- B. These rules do not apply to Indian tribes for expenditures specifically permitted by other Federal law.

### **2-130-40 Federal Funds and Lobbying**

A recipient and/or their subrecipients must not use Federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the award or amendment of any Federal contract, grant, loan, or cooperative agreement.

## **2-130-50 Required Certifications and Disclosures**

- A. If a recipient has made or agreed to make any payment for lobbying efforts using other funds which would be prohibited if paid with Federal funds, they must include form [SF-LLL](#), Disclosure of Lobbying Activities, with their application.
- B. Recipients must also submit an SF-LLL disclosure form at the end of each calendar quarter in which actual payments occur or when there are changes that materially affect the accuracy of the information in their previous disclosure form.
- C. If a recipient makes any subgrants over \$100,000, their subrecipients must submit a certification to them. In addition, those subrecipients must submit to the recipient the SF-LLL disclosure form for any payment for lobbying using other funds before the recipient makes the subawards or whenever actual payments or changes occur.
- D. If the recipient has lobbying activities to report submit the SF-LLL. If there is not lobbying to report, submit Certification Regarding Lobbying Form as part of the application.

## **2-130-60 Penalties for Violation**

- A. Any person who makes a prohibited expenditure will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- B. Any person who fails to file or amend the required disclosure form will be subject to a civil penalty of not less than \$10,000, and not more than \$100,000 for each such failure.

## **2-130-70 Certification Filing**

The awarding office must collect all lobbying certifications received and keep them in the official grant or cooperative agreement file.

## CHAPTER 2-140

### INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

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2-140-30 How to Apply to a State Intergovernmental Review System

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2-140-50 State Does Not have a Review Process

#### **2-140-00 Purpose**

The purpose of this chapter is to describe the procedures to ensure that states and other governmental entities have the opportunity to review and comment on proposed financial assistance agreements before the Office of Surface Mining Reclamation and Enforcement (OSMRE) decides whether to approve them.

#### **2-140-10 Purpose of Executive Order 12372**

- A. Executive Order (E.O.) 12372, *Intergovernmental Review of Federal Programs*, requires Federal agencies to provide state officials the opportunity to review and comment on proposed Federal financial assistance activities. Federal agencies must consider state comments before making a final decision.
- B. E.O. 12372 allows a state to establish an intergovernmental review system. The state must establish it in an official act of the state. The Office of Management and Budget (OMB) must certify that the state's system is in accordance with OMB directives. A state system may select any Federal program or activity for review.
- C. The Department of the Interior's rule implementing E.O. 12372 is published in [43 CFR Part 9](#), *Intergovernmental Review of Department of the Interior Programs and Activities*. This rule is also incorporated in the Departmental Manual, Part 511, *Coordination with State and Local Governments*. These procedures apply to all of OSMRE's financial assistance agreements.

#### **2-140-20 Intergovernmental Review Requirements**

- A. Indian tribes are not required to submit applications to state intergovernmental review clearinghouses for review.
- B. All other applicants for financial assistance must ensure that their applications meet their state's intergovernmental review requirements. If a recipient's state has an intergovernmental review process, and if they have chosen to review the OSMRE

program a recipient is applying for, then the recipient must submit the application for their review.

- C. Applications subject to intergovernmental review include new assistance agreements and amendments to increase funding for current assistance agreements.

### **2-140-30 How to Apply to a State Intergovernmental Review System**

- A. Recipients must submit their application for a new assistance agreement to the state Single Point of Contact (SPOC) at least 60 days before the planned award date. Recipients must submit a continuation assistance application to the SPOC at least 30 days before the planned award date.
  - 1. For the purposes of intergovernmental review, OSMRE considers their mandatory grant programs grant applications to be continuation grants. Grant applications are not considered new grants because they do not normally include information on specific proposed reclamation projects.
  - 2. To assure proper timing of reviews by the state system, recipients should indicate in their application (on the [SF 424](#) form, item 8, Type of Application) whether the application is for a continuation grant or a new assistance agreement.
- B. Provide evidence to OSMRE in the application that was provided to the state system opportunity to comment on a recipient's proposal. A recipient can show this on the SF 424 in Item 16, "Is Application Subject to Review by State E.O. 12372 Process?" and in Item 3, "Date Received by State" and "State Application Identifier."

### **2-140-40 State Review Recommends the Application**

- A. The state SPOC may send state process recommendations to OSMRE or to the recipient. If a recipient receives any recommendations or comments about their application from their residing state SPOC, either before or after OSMRE has awarded their agreement, the recipient must send them immediately to the awarding office that received the application.
- B. OSMRE must make efforts to accommodate intergovernmental concerns by one of the following actions:
  - 1. Accept the recommendation.
  - 2. Reach a mutually agreeable solution with the state process.
  - 3. Provide the state SPOC with a written explanation of the decision before any other action is taken on the proposal.

## **2-140-50 State Does Not have a Review Process**

- A. In the absence of E.O. 12372 requirements, the consultation provisions of the Intergovernmental Cooperation Act of 1968 apply to the recipient's application. The Act requires OSMRE to notify affected state, area-wide and regional agencies, and local governments directly of the proposed actions. The awarding office must send notices of intent, which include a description of the proposed financial assistance, a due date for responses, which allows at least 60 days for a new award or 30 days for a continuation, and how to contact the awarding office.
  
- B. Under this Act, OSMRE is only required to consider the recommendations of intergovernmental agencies and officials. Thus, OSMRE is not required to accommodate their concerns, explain the awarding office's decision, or provide prior notifications of other actions. However, OSMRE will try to work with all interested parties to respond to their concerns.

**CHAPTER 2-150**  
**ANTI-DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS**

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**2-150-00 Purpose**

The purpose of this chapter is to describe the procedures to ensure compliance with Title VI of the Civil Rights Act of 1964 and other anti-discrimination laws. The requirements in this chapter apply to all applications and awards for OSMRE grants and cooperative agreements.

**2-150-10 Policy**

The civil rights program is authorized by the following laws, regulations, and executive orders:

- A. Civil Rights Act of 1964, Title VI (P.L. 88-352; 42 U.S.C. 2000d 2000d-4).
- B. Rehabilitation Act of 1973 (P.L. 93-112; 29 U.S.C. 794) as amended.
- C. Education Amendments of 1972, Title IX (P.L. 92-318; 86 Stat. 235; 373) as amended.
- D. Age Discrimination Act of 1975, as amended, (P.L. 94-135, Title III; 42 U.S.C. 6101 *et seq.*).
- E. Americans with Disabilities Act of 1990 (P.L. 101-336) with the Department of Justice (DOJ) regulations at 28 CFR 35, including the Americans with Disabilities Act, Title II.
- F. Executive Order (E.O.) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.
- G. E.O. 13166, *Improving Access to Services for Persons with Limited English Proficiency (LEP)*.

**2-150-20 Public Civil Rights Program**

- A. The Public Civil Rights program ensures that OSMRE complies with Title VI of the Civil Rights Act. Title VI prohibits discrimination in Federally funded programs based on race, color, or national origin. Title VI protects against a broad range of discrimination, including denial of services; differences in the quality, quantity, or manner of services;

different standards for participation; and discrimination in an activity conducted in a facility built with Federal funds.

- B. Congress authorized Federal agencies to enforce Title VI to prevent recipients from using Federal funds to support discrimination. The Public Civil rights program works with states and educational institutions which receive OSMRE financial assistance.
- C. The Public Civil Rights program ensures that following objectives are met:
  - 1. Members of the public who participate in programs and activities that OSMRE funds have equal access to those programs and activities and the facilities where the programs take place.
  - 2. Recipients of Federal financial assistance, particularly states, do not exclude people from any program, activity, or facility, or deny them benefits, or otherwise discriminate against them on the grounds of race, color, national origin, age, disability, or sex.

#### **2-150-30 Requirements**

- A. Recipients must comply with all Federal statutes and requirements relating to nondiscrimination.
- B. Applications for financial assistance must include assurances that the applicant will comply with all nondiscrimination requirements. Applicants must complete either the Assurances for Non-Construction Programs, Standard Form ([SF](#) 424B), or the Assurances for Construction Programs, [SF 424D](#).

#### **2-150-40 Discrimination**

- A. If OSMRE discovers discrimination, the awarding office will work with the recipient to ensure that discriminatory policies or practices are changed in a timely manner.
- B. If a recipient does not work voluntarily to eliminate the discrimination, OSMRE may refer the matter to the DOI Office of Diversity, Inclusion and Civil Rights for enforcement actions which may include the following sanctions:
  - 1. Termination of the financial assistance agreements.
  - 2. Referral to the Department of Justice for civil enforcement through Federal courts.

## CHAPTER 2-200 PROPERTY

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2-200-70 Managing Federally Owned Equipment

2-200-80 Title Transfer

2-200-90 Managing Supplies

### **2-200-00 Purpose**

The purpose of this chapter is to explain the policy and procedures for the use, management, and disposition of property, equipment, and supplies purchased by the recipient, under an assistance agreement from the Office of Surface Mining Reclamation and Enforcement (OSMRE).

### **2-200-10 Policy**

Requirements for the use, management, and disposal of property, supplies, and equipment acquired under a recipient's assistance agreement are established in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at [2 CFR Part 200 Subpart D](#)*.

### **2-200-20 Property Standards**

[2 CFR 200.310 - 200.316](#) and [30 CFR part 879](#) discuss the use and disposition requirements that may apply to different types of property acquired or improved under an OSMRE grant or cooperative agreement.

### **2-200-30 Equipment**

Equipment is nonexpendable personal property with a useful life of more than one year and an acquisition cost of \$10,000 or more per unit. Alternatively, recipient's may use their own definition of equipment, if the definition includes all property, which would be considered equipment under [2 CFR 200.313](#).

### **2-200-40 Title to Equipment**

Title to equipment a recipient acquires under an assistance agreement will vest in the recipient or



subrecipient upon acquisition, subject to the obligations and conditions in this section.

## **2-200-50 Managing Equipment**

States will use, manage, and dispose of equipment acquired under an assistance agreement in accordance with state laws and procedures. Equipment needs to be reported on an annual basis per [2 CFR 200.313 \(d\)/\(e\)](#).

## **2-200-60 Non-State Entities Requirements to Manage Equipment**

- A. If a recipient is not a state government, they must follow these requirements regarding the use of equipment:
  - 1. Use equipment in the program or project for which the recipient acquired it if it is needed. This applies to whether the program continues to be supported by Federal funds. When a recipient no longer needs the equipment for the original program, they may use the equipment for other activities currently or previously supported by a Federal agency.
  - 2. Recipients may also make equipment available for use on other programs or projects currently or previously supported by the Federal government. That use must not interfere with the work on the program for which the equipment was acquired. Recipients must give other programs or projects supported by OSMRE first preference for other use. Consider charging user fees, if appropriate.
  - 3. Do not use equipment acquired with assistance funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically authorized by Federal statute.
  - 4. Fees for services provided with OSMRE furnished equipment should be authorized by OSMRE before services are provided with the equipment. The use of the equipment may not violate any laws or regulations. Recipients must contact the grants office if there are any questions.
  
- B. Procedures for managing equipment must meet the following minimum requirements:
  - 1. Recipient must maintain property records that include:
    - a. A description of the property.
    - b. A serial number or other identification number.
    - c. The source of the property.

- d. Who holds the title.
  - e. The acquisition date.
  - f. Cost of the property.
  - g. Percentage of Federal participation in the cost of the property.
  - h. The location, use, and condition of the property.
  - i. Disposition data including the date of disposal and the sale price of the property.
2. Recipients must take a physical inventory of property and reconcile the results with their property records at least once every two years. They must provide a copy of the results of the physical inventory and reconciliation to OSMRE.
  3. Develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Investigate any loss, damage, or theft which occurs, and provide the results of the investigation to OSMRE.
  4. Recipients must develop adequate maintenance procedures to keep the property in good condition.
- C. Dispose of original or replacement equipment when it is no longer needed for the original program or for other activities currently or previously supported by a Federal agency. Recipients must dispose of the equipment according to the following rules and inform OSMRE of the disposition action taken:
1. Recipients may keep, sell, or otherwise dispose of items of equipment with a current per unit fair market value of less than \$10,000 with no further obligation to OSMRE.
  2. Keep or sell items of equipment with a current per unit fair market value (FMV) of \$10,000 or more after compensating OSMRE. To calculate the amount to pay the awarding office, apply the percent share of the original cost to the current fair market value of the equipment.
  3. If the recipient sells equipment, they must establish proper sales procedures to ensure the highest possible return (FMV).
  4. If the recipient fails to take appropriate or timely disposition actions, OSMRE may direct the recipient to take the appropriate actions.
- D. When equipment is replaced, which is no longer serviceable or efficient, the recipient may use the old equipment as a trade-in or sell it and use the proceeds to purchase

replacement equipment. Recipient must meet the following requirements:

1. The replacement equipment must serve the same function as the original equipment; however, the equipment does not necessarily have to be of the same type, grade, or quality.
2. If recipient trades in or sells the equipment, the value credited for it must be comparable to its fair market value.
3. The sale of the equipment and purchase of its replacement must occur close enough in time to show that the two events are related; however, recipient may purchase the replacement equipment before they sell the original equipment.
4. Replacing equipment in this way is not a disposition of the equipment. Recipients are not required to compensate OSMRE for the Federal share of the equipment at the time of replacement. Instead, the Federal share of the original equipment will be transferred to the replacement equipment with an appropriate adjustment as follows:
  - a. Apply the percentage of Federal share in the cost of the old equipment to the proceeds from its sale or the amount credited for trade-in to set a dollar amount for Federal share of the proceeds.
  - b. Use the dollar amount of the Federal share of the proceeds to reduce the Federal share of the cost of the replacement.
  - c. If the Federal share of the proceeds is greater than the Federal share of the cost of the replacement, recipient may use the excess funds to reduce the Federal share of the grant. Otherwise, recipient must return the excess funds to OSMRE.

## **2-200-70 Managing Federally Owned Equipment**

If OSMRE provides any Federally owned equipment to a recipient, the following rules apply:

- A. Title to the equipment will remain vested in the Federal government.
- B. Manage the equipment under the same requirements as equipment the recipient acquired through the assistance agreement.
- C. Complete an inventory list annually and send it to the awarding OSMRE office. To report, use the Tangible Personal Property Report ([SF-428](#)). This report allows for a recipient to provide an inventory list. List the inventory in any format which gives OSMRE enough information to determine the status of the equipment.

- D. When the project no longer needs the equipment, recipients must request disposition instructions from OSMRE.
- E. OSMRE will keep a record of any federally owned equipment or property. Recipients must report equipment or property annually until disposition (SF-428 Forms).

## **2-200-80 Title Transfer**

OSMRE reserves the right to transfer title of any equipment acquired through an OSMRE assistance agreement to the Federal government or to a third party named by OSMRE. Such transfers will be subject to the following requirements:

- A. The awarding office must identify the specific piece of property to the recipient in writing. OSMRE will give the recipient this notice in the award document or as soon as possible after the equipment purchase is approved so that the recipient can note this restriction in their property management system.
- B. OSMRE will issue disposition instructions within 120 calendar days of the end of the assistance agreement in which the recipient acquired the equipment. If the awarding office fails to issue disposition instructions in this period, the recipient may follow normal equipment disposition procedures.
- C. When OSMRE transfers a title to the equipment, the recipient will receive a payment calculated by applying the percentage of their participation in the purchase to the current fair market value of the property.

## **2-200-90 Managing Supplies**

Supplies are items of personal property which do not meet the criteria for equipment. Items which have a useful life of less than one year or cost less than \$10,000 per unit are supplies. Recipients must meet the following requirements when managing supplies:

- A. Title to supplies acquired under an assistance agreement will vest in the recipient upon acquisition.
- B. Recipient must purchase supplies only in amounts reasonably expected to be needed for the period of the OSMRE funded assistance agreement.
- C. Although a recipient does not have to account for supplies as they do for equipment, they must maintain adequate records to document the purchase, receipt, cost, and use of supplies in accordance with good management practices.
- D. There may be unused supplies left at the end of the award. If the supplies total fair market value is over \$10,000 and a recipient does not need the supplies for other Federally sponsored programs or projects, they must compensate OSMRE for the Federal share. To calculate the amount to pay OSMRE, apply the percentage share in

the original cost to the fair market value of the supplies per [2 CFR 200.314](#).

## **CHAPTER 2-210 REAL PROPERTY**

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2-210-70 Managing and Reporting Real Property

2-210-80 Disposition

### **2-210-00 Purpose**

The purpose of this chapter is to explain how to acquire land and charge the costs of a building or facility a recipient purchases or constructs to their assistance agreement from the Office of Surface Mining Reclamation and Enforcement (OSMRE). This chapter will lay out the requirements for costs to alter or renovate an existing building or facility, along with management and disposal of the property.

### **2-210-10 Acquiring Land with OSMRE Funds**

Real property is land, including buildings, and improvements to these structures that are fixed on the land. Recipients may use OSMRE assistance funds to acquire land or other real property. If recipients are acquiring real property for use by a program, see [2 CFR Part 200](#). Recipients must meet the following requirements:

- A. Recipients need to acquire specific approval from OSMRE before any funds are spent to acquire real property. The approval decision will be made by the OSMRE official who is authorized to award the assistance agreement.
- B. Recipients will hold the title to all real property. Title vests in their organization upon acquisition. Per [2 CFR 200.311\(b\)](#), except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the recipient must not dispose of or encumber its title or other interests.
- C. Recipients must refer to any program specific regulations for acquiring land.

## 2-210-20 Real Property Policy

In most cases, recipient does not need to acquire land to reclaim it, but on rare occasions it may be necessary. OSMRE does not encourage the purchase of sites with coal or coal refuse because that may result in recipients having to provide for long-term water treatment. See [2 CFR 200.311](#) for more information on real property. Recipients must meet the following requirements to acquire land:

- A. The land to be acquired must be adversely affected by past coal mining practices and acquisition must be necessary for successful reclamation. The land must also serve recreation, historic, or conservation purposes after reclamation. It must also have permanent facilities for reclamation of mining impacts or preventing future damage to the land, such as a relocated stream channel, or diversion ditch. Recipient may acquire coal refuse disposal sites, including the coal refuse.
- B. OSMRE and the recipient must agree that the land acquisition is necessary for the project. Please see annual guidance on [OSMRE.gov](#) for program specific considerations.
- C. Follow the provisions in sections 407 and 409 of SMCRA, OSMRE regulations at 30 CFR Part 879, and the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (P.L. 91-646) for the acquisition, use, and disposition of the land.
- D. Land must be purchased at fair-market value.
  - 1. Recipient must demonstrate to OSMRE that acquisition of the property is necessary to achieve the goals of the project and that other options such as easements or a different location are not viable.
  - 2. The recipient may use up to 50% of the amount of the watershed cooperative agreement funding for the purchase of the land and related expenses.
  - 3. The recipient pays at least 10% of the cost of the property with funds from sources other than the AML Fund.
  - 4. Follow the provisions of Section 407 of SMCRA and 30 CFR Part 879.
  - 5. The future property owner must be recipient's organization.
  - 6. OSMRE's contribution to the purchase price of the property must not exceed the appraised fair market value.
  - 7. The property appraisal should be prepared by a state-certified real estate appraiser. The appraiser should be certified for general property appraisals, not just for residential properties.
  - 8. Send the appraisal to the appropriate regional office for review. The regional

staff must accept the appraisal before recipient spends Federal funds to purchase the property.

9. The deed of transfer must specify that the property will be used for the purposes of the project and/or recreation, conservation, or environmental education purposes in perpetuity<sup>2</sup>. If the original owner organization dissolves or is unable to continue managing the property as intended, the property must be transferred to another non-profit organization with similar goals. The new owner organization must continue to operate and maintain the property as appropriate.
10. The deed of transfer must specify that if the owner determines the property is no longer needed for the purposes stated in the deed, the owner will notify and consult with OSMRE for appropriate disposition instructions.

### **2-210-30 Allowable Costs for Purchasing or Constructing a Building**

OMB provides two methods for determining the allowable costs for a building.

- A. Under the Capital Expenditure method, recipient may charge the entire cost of the building to the assistance agreement at the time it takes to buy or build it. The awarding office must specifically approve the expenditure in advance. Capital expenditure costs are treated as direct costs.
- B. Under the Depreciation or Use Allowance method, recipient may charge the costs of the building to assistance agreements over time through depreciation or use allowances. Recipient charges a portion of the cost to the program each year over the useful life of the building. Depreciation or use allowance charges are often treated as indirect costs.

### **2-210-40 Capital Expenditure Method**

Recipient may request the awarding office's approval to charge the entire cost of a building they are purchasing or constructing as a capital expenditure. OSMRE may approve this request if it is determined to be justified. Recipient must meet all of the following conditions:

- A. Existing law does not prohibit the charge.
- B. Use the building exclusively for an OSMRE supported program or for other Federally supported programs.
- C. Recipient expects to need this facility for this purpose long-term.

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<sup>2</sup> The term "perpetuity" is under careful consideration to determine its appropriateness as it relates to OSMRE funding programs. Results of this review will be published in future FFAM updates.



- D. Acquire the building to accomplish the objectives of the OSMRE program. A general-purpose building will not meet this condition if the new space is needed because of the expansion of programs supported by non-Federal funds or because of the expansion of Federally supported programs in facilities also used by non-Federal programs.
- E. Recipient cannot already own the facility. However, this requirement does not apply to land recipient owns, if they purchased the land expecting to build a facility meeting the requirements of this section.
- F. All Federal agencies responsible for administering the programs must approve the use of the Capital Expenditure method.
- G. If recipient charges the full cost under the Capital Expenditure method, OSMRE may require the recipient to establish a special indirect cost rate for the programs conducted in the facility. If recipient does not establish a special rate, the awarding office must notify the appropriate Federal cognizant agency before the use of the approved indirect cost rate.
- H. If recipient sells the facility or uses it for purposes OSMRE does not authorize, recipient will be accountable to the Federal government for the Federal interest in the facility. See the applicable [2 CFR 200 Subpart E](#) for more information.

## **2-210-50 Depreciation or Use Allowance Method**

If recipient does not use the Capital Expenditure method to purchase or construct a facility, then they will use the Depreciation method or Use Allowance method. Recipient must use the original acquisition cost of the facility as the base for either method. If recipient calculates a depreciation charge, use the useful life of the facility. Recipient should normally calculate depreciation on a straight-line basis. Under the Use Allowance method, the annual charge may not exceed 2% of the acquisition cost of the building. See the applicable [2 CFR 200 Subpart E](#) for more information on depreciation or use allowance charges.

## **2-210-60 Alterations or Renovations to a Building**

- A. Recipient may request prior approval to charge renovation costs to their assistance agreement. The renovations may change the building's interior layout, environment, or utilities. These costs are normally charged to individual assistance agreements as a separate category of direct costs.
- B. The request must justify the need to alter or renovate the building to support the program. At a minimum, recipient's request to charge renovation costs to their assistance agreement should include the following information:
  - 1. Provide a cost analysis that compares the proposed alteration or renovation with other options, such as leasing, construction, or purchasing. The level of detail

required for the cost analysis will depend on the proposed cost of the project, and the specific circumstances of recipient's request.

2. Demonstrate that the building has an appropriate life expectancy and is suitable for the conversion project proposed.
3. Explain why the building renovation is essential to recipient's program.
4. Confirm that the renovated space will be occupied.

## **2-210-70 Managing and Reporting Real Property**

- A. Recipients must comply with the terms and conditions of the assistance agreement when managing real property acquired in whole or in part with OSMRE funds. This applies even if the program or project is no longer supported by Federal funds.
- B. Recipients submit reports at least annually on the status of real property unless the Federal interest in the real property extends 15 years or longer. If interest extends 15 years or longer, then the awarding office may require the recipient to report at various multi-year frequencies per [2 CFR 200.330](#). OSMRE will keep real property inventory for each state annually (SF-429 form).

## **2-210-80 Disposition**

- A. When the real property is no longer needed for the original purpose, recipient must request disposition instructions from the awarding office. OSMRE will provide disposition instructions using one of the following options:
  1. Recipient may keep title to the property after compensating OSMRE. To calculate the amount to pay OSMRE, the recipient applies the OSMRE percentage share in the original cost to the current fair market value of the property.
  2. If the recipient sells the property, then OSMRE must be compensated. To calculate the amount to pay OSMRE, deduct recipient's actual selling and fix-up expenses from the proceeds of the sale of the property. Apply the OSMRE percentage share in the original cost to the net proceeds. Recipient must use sales procedures that provide for as much competition as practicable, and result in the highest possible return.
  3. Transfer title to OSMRE or to a third party the awarding office names or approves. OSMRE will pay the recipient the compensation calculated by applying their percent share in the original cost to the current fair market value of the property ([2 CFR 200.311](#)).

## CHAPTER 2-220 PROGRAM INCOME

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### **2-220-00 Purpose**

The purpose of this chapter to explain the policies on program income generated by any grant or cooperative agreement awarded by OSMRE. This chapter defines program income and describes how the recipient must manage and use it.

### **2-220-10 Policy**

OSMRE's policies about earning, reporting, and using program income come from *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200, Subpart D](#).

### **2-220-20 Program Income Definition**

- A. Program income is the gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance.
- B. The following types of income are examples of program income. Note that this is not a complete list. Other items not included here may also be program income:
  - 1. Fees recipient receives for services they perform.
  - 2. Revenue from sale of products made under an assistance agreement, such as publications.
  - 3. Fees to rent or use equipment or real property recipient acquired with assistance funds.
  - 4. Income from permit fees.
  - 5. Insurance premiums received under the Subsidence Insurance program.
- C. The following types of income are not considered program income:

1. Proceeds from the sale of real and personal property, either purchased through an assistance agreement or provided by OSMRE, are not considered program income. Information on how to manage/dispose of property can be reviewed in Chapter 2-200 for property or 2-210 for real property.
2. Credits applied against expenditures, such as a rebate on an equipment purchase, are reductions of costs rather than program income. These credits must be applied to the related cost to reduce the expense charged to the assistance agreement.
3. Income from fines, penalties, and forfeitures collected by a state or tribal coal regulatory authority are not program income. These funds should be used to improve quality of life and the environment in the state or on tribal lands.
4. Tax revenues dedicated to the purposes of recipient's program are not program income.
5. Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee paid under an assistance agreement are not program income.

### **2-220-30 Program Income Benefits**

It is encouraged by OSMRE to earn program income to reduce program costs.

### **2-220-40 Federal Regulations for Program Income**

- A. The Code of Federal Regulations at [2 CFR Part 200 Subpart D](#), provides three methods for treating program income from Federal assistance agreements:
  1. The Deduction method uses program income to reduce program costs. Program income must be deducted from total allowable costs to determine net allowable costs. The net allowable costs are then divided into Federal and non-Federal shares according to the percentages in the award. Under this method, program income reduces recipient's costs and OSMRE costs for the program. The total program budget does not increase.
  2. The Addition method adds program income to the Federal and non-Federal funds already awarded to increase the total program budget.
  3. The Cost sharing or matching method allows the recipient to use all program income to meet the cost sharing or matching requirements under the assistance award. This method reduces the costs for the program. The Federal cost and the total program budget do not change.

- B. The terms and conditions for the program will specify which of these three methods the recipient must use or if they have the option to choose.

## **2-220-50 Accounting for Program Income**

The applicant can request either the additive or deductive method for Program Income. If the applicant does not request a preferred Program Income method, the default will be deductive.

- A. Recipient is accountable for the program income received.
- B. The recipient must use program income funds according to the assistance agreement and the treatment method authorized for the program.
- C. Program income from all sources on interim and final financial reports is to be reported by the recipient.
- D. Records of program income should be kept in the same manner as required for funds provided by the assistance agreement. The recipient must maintain financial records of program income receipt and disposition adequate to track and audit such income.

## CHAPTER 2-230 MATCHING AND COST SHARING

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- 2-230-80 Contributions as Direct or Indirect Costs
- 2-230-90 Policy for Indirect Costs for Match Requirements

### **2-230-00 Purpose**

The purpose of this chapter is to explain the match requirements in assistance agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE) and how the recipient can meet them.

### **2-230-10 Policy**

- A. Policy Federal share and recipient share costs are found in from the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).
- B. The level of match required for a specific assistance program is set by legislation or agency regulations or directives. For example, the Surface Mining Control and Reclamation Act (SMCRA) require states to provide at least a 50% match for Regulatory program Administration and Enforcement (A&E) grants for work on non-Federal lands.

### **2-230-20 Match Definition**

Some assistance programs require costs to be shared between Federal funds and non-Federal funds. Match is the level of non-Federal support which is required for a program or in an assistance agreement.

### **2-230-30 Costs Permitted for Match Requirements**

- A. The following are methods that are accepted for match and cost sharing requirements:
  - 1. Pay for allowable costs of recipient's program with funds from their

organization, non-Federal grants, or other cash donations.

2. Use in-kind contributions from third parties for the program.
- B. Recipient may not meet a match requirement with costs paid by another Federal assistance agreement unless using those particular funds as match is specifically authorized by law.
  - C. Recipient may not consider a cost or contribution as match for their OSMRE agreement if it has been used to match another Federal assistance agreement or any other award of Federal funds. Recipients may prorate a cost or contribution between two or more Federal agreements as long as no costs are claimed more than once.
  - D. Records must document the costs and contributions the recipient reports as match. The records must show how they calculated the value placed on in-kind contributions.
  - E. This will be addressed directly by each individual program.

#### **2-230-40 Match Restrictions with OSMRE Funds**

- A. Recipient may not use any OSMRE funds under any assistance agreement or contract to meet match requirements of other Federal agreements unless that use is specifically authorized by law.
- B. Appropriations laws for some fiscal years allows recipients to use Abandoned Mine Land (AML) program funds as non-Federal match for projects funded by other Federal agencies for environmental restoration related to treatment or abatement of acid mine drainage from abandoned mines. The projects must be consistent with the purposes and priorities of SMCRA. For guidance on the status of specific AML funds a recipient wishes to use as match for other Federal assistance, contact the OSMRE office which awarded the grant.
- C. AML set-aside funds may be used and interest earned on those funds as match for other Federal assistance programs. The purposes of the other program must be consistent with the purpose of the set-aside account.

#### **2-230-50 Match Requirements and Program Income**

- A. For non-Regulatory awards, recipients may not use costs paid with program income as match unless the awarding office has approved that use for the program income earned.
- B. Recipients may use costs paid with program income generated from a Regulatory A&E grant to meet the match requirement of the grant.

## 2-230-60 In-Kind Contributions

- A. Recipients may use goods and services donated to their program to meet match requirements only if the contribution is necessary for the program activities and the cost would be allowable if the recipient paid it in cash.
- B. The use of a third-party in-kind contribution to a fixed-price contract as match is allowed, only if it results in a cost savings for the recipient, or an increase in the services or property provided under the contract at no additional cost to the recipient.

## 2-230-70 Value of In-Kind Contributions

- A. *Volunteer services.* Recipients should value services provided to their program by volunteers at rates consistent with what they pay employees doing similar work. If they do not have employees doing similar work, use what other employers in the geographical area pay for similar work. Recipients may include a reasonable amount of fringe benefits. Records must support and document volunteer services, to the extent feasible, by the same methods that is used for employees performing similar work.
- B. *Employees of other organizations.* When another organization contributes the services of an employee to do their normal type of work at no cost, recipients should value these services at the employee's regular rate of pay (excluding the employer's fringe benefits and overhead costs). If the employee is not doing their normal work, recipients should value their services under the volunteer services rule above.
- C. *Donated supplies.* Value donated supplies at the fair market value of the supplies at the time they are received.
- D. *Loaned equipment or space.* If a third party donates the use of equipment or building space they own, recipient should value the contribution at the fair market rental value of the equipment or space.
- E. *Donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and gives a recipient the title to the property, the amount they can claim as match depends on whether the grant is for capital or operating expenditures.
  - 1. If the purpose of the grant is to acquire equipment, buildings, or land, recipients may claim the total market value of the property at the time of donation. However, if any part of the donated property was acquired with Federal funds, recipients may use only the non-Federal share of the property as match.
  - 2. If the purpose of the grant is to support activities that require the use of equipment, buildings, or land, one of the following rules apply:
    - a. May claim depreciation or a use allowance based on the fair market



value of the donated property. Recipients must determine and allocate the depreciation or use allowance following OMB cost principles as if they had purchased the property at the fair market value.

- b. Request OSMRE approval to claim the fair rental rate of the donated land or the full market value of the equipment or buildings at the time it is donated as match. The awarding office will approve the request only if they would have approved the purchase of the equipment or building or actual rental of the land as an allowable direct cost. If any part of the donated property was acquired with Federal funds, recipient may use only the non-Federal share of the property as match.
3. In some cases, recipient must determine the fair market value of land or a building, or the fair rental rate of land or space in a building. OSMRE may require recipients to have the market value or rate set by an independent appraiser and to have an authorized official of their organization certify the value or rate before the awarding office accepts these costs as match.

## **2-230-80 Contributions as Direct or Indirect Costs**

Recipients must classify a contribution as a direct or indirect cost in the same way they classify similar costs which they charge to Federal funds. If recipients treat items such as rent, utilities and accounting as indirect costs when they develop their indirect cost rate, then they may not claim contributions in these categories as direct costs. Similarly, if recipient already owns facilities and equipment, they may not count their use as a direct cost contribution to the program if depreciation or use charges for the property are included in the indirect cost rate.

## **2-230-90 Policy for Indirect Costs for Match Requirements**

- A. Recipient may accept in-kind contributions of goods and services that would have been indirect costs if they had to pay for them. May use indirect cost contributions as match only if their approved indirect cost rate includes the value of the contributions.
- B. If recipients have multiple indirect cost rates, the requirement for consistent classification of costs applies separately to the activities covered by each rate. For example, if they have approved rates for "onsite" and "offsite" activities, recipients may charge the costs of renting offsite facilities to offsite activities as a direct cost even if they treat facility costs as indirect costs for onsite activities.
- C. If OSMRE negotiates a recipient's indirect cost rate, the awarding office will only negotiate "offsite" or other special indirect cost rates if they are justified under the applicable cost principles. OSMRE will not establish special indirect cost rates just for cost sharing or matching arrangements.

## **CHAPTER 2-240 PROCUREMENT GUIDELINES**

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### **2-240-00 Purpose**

The purpose of this chapter is to provide guidelines for procurement with funds from assistance agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to the recipient. This guidance is to ensure that recipients get the materials and services their project needs efficiently and appropriately.

### **2-240-10 Policy**

Requirements for procurements with Federal funds are found in Federal laws and the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* [2 CFR Part 200 Subpart D](#).

Build America Buy America and Davis Bacon-Act, 2 CFR 200.322, and 2 CFR Part 184 are applicable.

### **2-240-20 Procurement Definition**

Procurement is the act or process of purchasing the services and goods a program needs.

### **2-240-30 Procurement Rules for the States/Tribes**

Recipients must use the same policies and procedures they use for procurements with state funds. They must ensure that every purchase order or contract includes any clauses required by Federal statutes, executive orders, and regulations.

### **2-240-40 Procurement Rules for Non-State/Tribal Entity**

A recipient, other than a state, will use their own procurement procedures based on state and local laws and regulations. However, the procurements must follow applicable Federal law and the standards in [2 CFR Part 200 Subpart D](#). These standards include the following requirements:

- A. The recipient's procurement system must ensure that procurements are effective, efficient, and

economical. Plan and carry out procurement transactions to provide full and open competition. Analyze proposed procurements to ensure they are necessary and the cost is reasonable. Consider alternative sources and methods to reduce costs. Make awards only to responsible contractors with the ability to perform successfully. Maintain a contract management system which ensures that contractors perform in accordance with the terms of the contract.

- B. Recipient must ensure that no employee, officer, or agent of their organization with a conflict of interest, real or apparent, will participate in the selection, award, or administration of a contract. Federal agencies must establish conflict of interest policies for Federal awards. A recipient or subrecipient must disclose in writing any potential conflict of interest to the Federal agency or pass-through entity in accordance with the established Federal agency policies as per 2 CFR 200.112.
- C. An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the Federal agency, the agency’s Office of Inspector General, and pass-through entity (if applicable). Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with Appendix XII of this as per 2 CFR 200.113.
- D. Settle all contractual issues in accordance with good administrative practice and sound business judgment. OSMRE will not step in and substitute any judgment for a recipient’s unless the matter is primarily a Federal concern. Recipients must refer violations of law to the local, state, or Federal authority with jurisdiction.
- E. Recipients must have a protest procedure to resolve procurement disputes. Recipients must inform OSMRE of any protests. A protestor must exhaust all a recipient’s administrative remedies before pursuing a protest with OSMRE. The awarding office will review protests of a recipient’s contracts only if there is a violation of Federal law, regulations, or a violation of their protest procedures.
- F. Maintain records detailing the significant history of each procurement action. These records must include, but are not limited to, the reason for selecting the method of procurement and the type of contract, contractor selection or rejection, and the basis for the price.

## **2-240-50 Provision Requirements for Contracts**

- A. Both a recipient’s contracts and the contracts of their sub-recipients must include the following provisions:
  - 1. Contracts must include notice of OSMRE requirements and regulations about:
    - a. Reporting.

- b. Copyrights and rights in data.
    - c. Patent rights for any discovery or invention which arises or is developed under the contract.
  - 2. Require contractors to keep all records, paper or electronic, which are pertinent to the contract. Contractors must retain all required records for three years after recipient makes final payments and close all pending matters. Contractors must allow recipient, OSMRE, the Department of the Interior, the Comptroller General of the United States, or any authorized representatives, access to all records for the purpose of making audit, examination, excerpts, and transcriptions.
  - 3. Recognize mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat.871).
  - 4. All contracts over the small purchase threshold must include administrative, contractual, or legal remedies for contractors who violate contract terms, and provide appropriate sanctions and penalties.
  - 5. All contracts over \$10,000 must include provisions that allows recipients to terminate the contract for cause or for convenience. They must include notice of the termination procedures.
  - 6. Construction contracts and subcontracts over \$10,000 must require compliance with Executive Order (E.O.)11246, *Equal Employment Opportunity*, E.O. 11375, and related Department of Labor regulations (41 CFR Part 60).
  - 7. Contracts for construction or repair must require compliance with the Copeland "Anti-Kickback" Act (18 USC 874) and related Department of Labor regulations (29 CFR Part 3).
  - 8. All contracts, subcontracts, and subgrants over \$100,000 must require compliance with all applicable standards and requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), E.O. 11738, and Environmental Protection Agency regulations (40 CFR Part 1).
- B. OSMRE may also require provisions on changes, remedies, changed conditions, record retention and access, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.
  - C. The Davis-Bacon Act applies when OSMRE deals directly with a private contractor. The

awarding office will include Davis-Bacon provisions when they award contracts directly for Federal regulatory or reclamation programs.

- D. While SMCRA does not require recipients to comply with the Contract Work Hours and Safety Standards Act (40 USC 327-330), all contracts a recipient awards in excess of \$100,000 that involve the employment of mechanics or laborers must include provision for compliance with 40 USC 3702 and 3704.

## **CHAPTER 2-250**

### **FINANCIAL MANAGEMENT SYSTEMS**

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#### **2-250-00 Purpose**

The purpose of this chapter is to establish standards for the systems the recipient uses to manage and account for funds from an assistance agreement awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

#### **2-250-10 Policy**

Requirements for financial management systems for Federal assistance agreements come from the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).

#### **2-250-20 State Accounting of Funds**

- A. A recipient must expend and account for assistance funds according to the state laws, and procedures they use to expend and account for their own funds.
- B. The recipient's accounting and fiscal control procedures must meet the following standards:
  - 1. Permit the preparation of the reports required by the assistance agreement.
  - 2. Permit the trace of funds to a level of expenditures adequate to establish that the funds were used in compliance with the assistance agreement and the Surface Mining Control and Reclamation Act (SMCRA).
- C. A recipient must ensure that any subrecipient meet these financial management standards.

#### **2-250-30 Non-State Recipient's Standards for Financial Management**

A recipient, other than a state/commonwealth/tribe, must meet the following standards and also ensure that any subrecipients meet these standards:

- A. Make accurate, current, and complete disclosure of the financial results of program activities in the financial reports required by the assistance agreement.
- B. Maintain records which adequately identify the source and use of funds for the activities supported by the financial assistance. These records must contain information about awards, authorizations, obligations, unobligated balances, assets, liabilities, expenditures, income, and subgrants.
- C. Maintain an effective system of controls and accountability for all cash, real and personal property, and other assets. Recipient must adequately safeguard all assets and property. They must ensure that assets and property are only used for authorized purposes.
- D. Compare actual expenditures with budgeted amounts. Relate financial information to performance or productivity data. Recipient should develop unit cost data as appropriate. Normally, OSMRE does not require unit cost data in reports.
- E. Follow the applicable Office of Management and Budget (OMB) cost principles, OSMRE program regulations, and the terms of the assistance agreement when recipient determines whether costs are reasonable, allowable, and allocable.
- F. Support accounting records with source documentation such as paid checks, bank statements, invoices, payrolls, time and attendance records, contract and subgrant award documents, etc.
- G. If recipient receives advance payments, they must follow procedures to minimize the time between when the funds are received from the U.S. Treasury and when the recipient pays them out.
- H. Have written procedures for accounting system and operations.

#### **2-250-40 Financial Management System Review**

OSMRE may review the adequacy of a recipient's financial management system.

#### **2-250-50 Internal Control**

- A. Internal control is an integral component of an organization's management. It provides reasonable assurance that the following objectives are being achieved:
  - 1. Operations are effective and efficient. Programs meet their missions, goals, and objectives.
  - 2. Financial reporting is reliable.

3. The organization is in compliance with applicable laws and regulations.
- B. The Government Accountability Office (GAO) has established the following standards for internal control (GAO/AIMD-00-21.3.1 11/99). Although these standards were developed for the Federal government, they may also be helpful for a recipient's organization:
1. Management and employees should establish and maintain an environment throughout the organization that sets a positive and supportive attitude toward internal control and conscientious management.
  2. Internal control should provide for an assessment of the risks the organization faces from both external and internal sources.
  3. Internal control activities help ensure that management's directives are carried out. The control activities should be effective and efficient in accomplishing the agency's control objectives. Common internal control activities include the following:
    - a. Top level reviews of actual performance.
    - b. Reviews by management at the functional or activity level.
    - c. Management of human capital.
    - d. Controls over information processing.
    - e. Physical control over vulnerable assets.
    - f. Establishment and review of performance measures and indicators.
    - g. Segregation of duties.
    - h. Proper execution of transactions and events.
    - i. Accurate and timely recording of transactions and events.
    - j. Access restrictions to and accountability for resources and records.
    - k. Appropriate documentation of transactions and internal control.
  4. Information should be recorded and communicated to management and others within the organization that needs it. It should be in a form and within a time frame that enables people to carry out their internal control and other responsibilities.
  5. Internal control monitoring should assess the quality of performance over time. It should also ensure that the findings of audits and other reviews are promptly resolved.



## **CHAPTER 2-260**

### **SUPPORTING DOCUMENTATION AND ACCOUNTING FILES**

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#### **2-260-00 Purpose**

The purpose of this chapter is to provide guidance on the kinds of documents recipients should keep in their accounting files to support costs charged to an assistance agreement received from the Office of Surface Mining Reclamation and Enforcement (OSMRE).

#### **2-260-10 Personnel Costs and Consultant Services Supporting Documentation**

- A. Personnel compensation includes all salaries, wages, and other payments for services. They may be paid currently or accrued. The services must be necessary for the program and allocable to this assistance agreement. The cost must be reasonable for the services provided. Recipient's personnel compensation policies for costs paid with Federal funds must be consistent with those for activities paid with other funds.

Recipient should document amounts charged for personnel with payrolls that have been recorded and approved in accordance with generally accepted accounting principles (GAAP). Payrolls should be supported by time and attendance records of employees. If employees worked on more than one program or project, then the personnel costs charged to the assistance agreement should be supported by records showing how their time was distributed between projects.

- B. Fringe benefits are compensation other than salaries and wages. They may be paid currently or accrued. They include costs such as payroll taxes, leave, health benefits, and retirement. Fringe benefits are allowable to the extent that they are reasonable, and are required by law, contract, or policy. If employees work on more than one program or project, charge fringe benefit costs to the agreement in the same percentage as the salary charged to the agreement. Recipient should document fringe benefits with their established personnel compensation policy and show that it was applied consistently.
- C. Consultant services pay for qualified or expert individuals or organizations to provide professional and technical services. Recipient should support consultant costs with

proposals from more than one reputable consultant whenever feasible. Bills for consultant fees should provide a clear statement of the services performed and, as appropriate, the time worked, or the quantity of services provided. Recipient should file a copy of any reports produced by consultants.

## **2-260-20 Construction Costs Supporting Documentation**

- A. Construction costs in OSMRE assistance agreements normally relate to projects to reclaim abandoned mine sites, to restore water, or other resources damaged by past mining. OSMRE must approve projects before recipients begin actual construction by approving their grant application, issuing an environmental conclusion for the NEPA process (i.e., Record of Decision, Finding of No Significant Impact, or Categorical Exclusion), and by issuing an Authorization to Proceed (ATP). See section 4-160 of this manual for more information on the ATP process. In addition to actual construction costs, project costs may include other costs allocable to a specific reclamation project, such as planning and design, construction, monitoring, inspection, and administration.
- B. For construction and other contracts, recipient should document their contracting process. Files should include invitations for bids, contracts, construction monitoring reports, contractor's invoices, and any other documents needed to trace the history of the contract.
- C. Recipients should document their compliance with requirements from the Surface Mining Control and Reclamation Act (SMCRA), National Environmental Policy Act (NEPA), Endangered Species Act, and OSMRE regulations. For example, recipients should document their determination that a site was eligible for funding under Title IV of SMCRA, NEPA requirements have been met (refer to the OSMRE [NEPA Handbook](#) for details), check of contractors in SAM/FAPIIS, check Applicant Violator System (AVS) (as applicable) and their entry of sites, and accomplishments in the Enhanced Abandoned Mine Land Inventory System (e-AMLIS).
- D. For Abandoned Mine Land (AML) program grants, recipient should keep documentation adequate to justify the totals reported for AML project costs and to trace project costs to individual reclamation projects or sites.

## **2-260-30 Property Costs Supporting Documentation**

- A. See 2-200 or 2-210 for more information on equipment, supplies, and other property. Recipient should document equipment costs with approval documents, price quotations, purchase orders, requisitions, or contracts, receiving reports, and vendor invoices.
- B. Recipients should support supplies costs with purchase orders, requisitions, receipts, vendor invoices, or other evidence that the supplies were paid by, and used for the assistance program.

## **2-260-40 Direct Costs Supporting Documentation**

- A. Travel costs are expenses derived from employees traveling on official business. These expenses include, but are not limited to, transportation, lodging, and subsistence. Recipients may charge these costs on an actual cost basis, on a per diem or mileage allowance basis, or on a combination of the two, according to the travel policies of their organization. Travel policies should apply consistently to activities supported by Federal and non-Federal funds. Recipients should support travel costs with a report by the traveler of expenses incurred and the purpose of the travel and with evidence the costs were properly authorized and approved.
- B. Space costs are the costs of acquiring or renting space to use for the assisted project. See Chapter 2-210 of this manual for more information on leasing, purchasing, or constructing space. Space costs also include normal maintenance and operation costs required to make space usable for program purposes. Recipient should support space rental costs with a signed lease agreement showing all the terms of the rental. Recipient should support space use or depreciation charges by showing how the charge was calculated and applied to their program.
- C. Other direct costs include items or services such as repairs, utilities, telephones, internet access, publications and printing, subscriptions, and other miscellaneous expenses related to the assistance agreement. Recipient should support charges for other direct costs with vendor's invoices, receipts, or other evidence that was received and used the service for the purposes of the assisted program.

## **2-260-50 Indirect Costs Supporting Documentation**

- A. Indirect costs are incurred for a common purpose, benefits more than one program, and cannot readily be assigned to one program without more work than it is worth. Recipient must ensure that they do not charge items as direct costs which are already included in the indirect cost pool.
- B. Recipients should keep a copy of their cost allocation plan to show the cost elements in the indirect pools and explain the direct cost base and the cost allocation rationale.
- C. A copy of the approved indirect cost agreement in the assistance agreement file should also be kept by the recipient. If a recipient has charged costs to an OSMRE assistance agreement based on more than one approved indirect cost agreement, they should keep all applicable agreements.

## **2-260-60 Program Income Supporting Documentation**

Program income is all funds a recipient receives directly generated by an assistance supported activity or earned as a result of the assistance agreement during the performance period. See 2-220

of this manual for more information about program income. Program income should be supported with documents showing all funds the recipient receives, the sources of all program income, and how all program income was used.

## **2-260-70 Costs Transferred from One Funding Source to Another Documentation**

- A. Audit reports have cited instances where costs were transferred from other projects or programs to OSMRE assistance agreements many months after the costs were originally recorded. In some cases, the documentation did not adequately explain why the transfers were made. OSMRE recognizes that cost transfers may be appropriate when recipients support closely related work from more than one funding source or when they need to correct bookkeeping or clerical errors in the original charges. However, transfers that are frequent, late, or not adequately explained, particularly if the projects have significant cost overruns or unexpended fund balances, raise serious concerns. This may lead OSMRE to question the propriety of the transfers and the overall reliability of the recipient's accounting system and internal controls.
  
- B. When closely related work is paid from more than one funding source, recipients may transfer costs from the original funding source to OSMRE funds if the transfer meets all the following conditions:
  - 1. The cost is a proper and allowable charge to the OSMRE agreement.
  - 2. Document the transfer with a full explanation and justification.
  - 3. A responsible program official and a financial or administrative official certify that the transfer is appropriate.
  - 4. To the maximum extent possible, recipients should transfer costs within 120 days of the original charge. Transfers made long after the original charge raise serious questions concerning the propriety of the transfer. If recipients transfer costs more than 120 days after the original charge, the supporting documentation should also explain why the transfer was late.
  
- C. When recipients transfer costs to OSMRE assistance agreements to correct accounting errors, they must make the transfer promptly after the error is discovered. Recipients should make every effort to correct errors before they submit a financial report to OSMRE. Recipients should support the correcting transfer with a full explanation of how the error occurred and why the new charge is correct. An explanation which merely states that the transfer was made "to correct error" or "to transfer to correct project" is not sufficient.

Frequent errors or changes in recording costs may indicate the need for improvements in a recipient's accounting system and/or internal controls. Recipients should evaluate the need for improvements in these areas and make them. The awarding office may require

recipients to make improvements if it is determined that they are necessary to reduce errors or improve management of Federal funds.

## **2-260-80 Davis-Bacon, BABA, and Real Property Supporting Documentation**

- A. Davis-Bacon and Related Acts is responsible for determining prevailing wages, issuing regulations and standards to be observed by federal agencies that award or fund projects subject to Davis-Bacon labor standards, and overseeing consistent enforcement of the Davis-Bacon labor standards. This applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Acts states that contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. Supporting documentation could include the SF-308 or SF-1444.
- B. Build America Buy America (BABA) Act is enacted as part of the Infrastructure Investment and Jobs Act on November 15, 2021, established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States. This is included in every Notice of Grant Award as part of the terms and conditions. Please see chapter 4-600 for more information.
- C. Real Property is reported via the SF-429 form. This is to report real property status or to request agency instructions on real property that was/will be provided as Government Furnished Property or acquired (i.e., purchased or constructed) in whole or in part under a Federal financial assistance award. This includes real property that was improved using Federal funds and real property that was donated to a Federal project in the form of a match or cost share donation. This report is to be used for awards that establish a Federal Interest on real property. SMCRA based land and water reclamation, which is remediation and reclamation to abate the impacts of past coal mining, is not considered real property improvements and not subject to SF-429 reporting.

## CHAPTER 2-270 RECORD RETENTION AND ACCESS

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### **2-270-00 Purpose**

The purpose of this chapter is to describe the requirement that a recipient of any assistance agreement from the Office of Surface Mining Reclamation and Enforcement (OSMRE) is to retain records related to the assistance agreement. It also requires recipients to allow OSMRE to access these records.

### **2-270-05 Policy**

These requirements are established by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).

### **2-270-10 Records Subject to Retention Requirements**

These requirements apply to all financial and programmatic records, supporting documents, statistical records, and any other applicable record in electronic format pertaining to the recipient's assistance agreement.

### **2-270-20 Length of Record Retention**

- A. Recipient must keep these records for three years starting on the day the final expenditure report is submitted to OSMRE to close the assistance agreement, except as noted below. For an Abandoned Mine Land (AML) grant, the three-year retention period starts on the date of the final expenditure report for the whole grant regardless of the closeout date for individual subaccounts. Normally, the awarding office closes a one-year subaccount such as administrative costs after the first year of the three-year grant. However, recipients cannot dispose of the records of such subaccounts earlier than the rest of the records for that grant. Recipients must keep records of all the subaccounts in their grant for the full three-year record retention period of the grant.
- B. If any litigation, claim, negotiation, audit, or other action involving the records is started before the end of the three-year period, recipients must retain the records until this action

is completed and all issues arising from it are resolved or until the end of the regular three-year period.

The three-year retention period for records relating to real property and equipment acquired through an assistance agreement starts from the date of the disposition, replacement, or transfer of the property.

- C. Recipient must require contractors, subcontractors, and subrecipients to retain pertinent records for three years after recipient makes final payment to them and all other pending matters are closed.
- D. Continued use of equipment or property may require reporting (SF-428/429) after period of performance end date.

### **2-270-30 Federal Government's Access to Records**

OSMRE and the Comptroller General of the United States, or any of its authorized representatives, have the right to access any books, documents, papers, or other records kept by recipients and their subrecipients which are pertinent to OSMRE assistance agreements. OSMRE may audit or examine records, make excerpts, or transcripts. OSMRE right of access is not limited to the three-year retention period but will last as long as recipients keep the records. OSMRE may request information at any time see Records Retention and Access at [2 CFR 200.334 – 200.338](#).

### **2-270-40 Freedom of Information Act Applicability**

The Freedom of Information Act (5 U.S.C. 552) does not apply to the recipient's assistance agreement records. It also does not apply to records maintained by subrecipients. Recipients are not required to permit public access to their records by the Freedom of Information Act. However, other Federal, state, or local laws may require them to provide some type of public access to their records.

## CHAPTER 2-280 ENFORCING AND TERMINATING ASSISTANCE AGREEMENTS

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- 2-280-00 Purpose
- 2-280-10 Policy
- 2-280-20 Requirements of the Agreement Are Not Met
- 2-280-30 Prior to Reducing, Suspending, or Terminating an Agreement
- 2-280-40 Stop Payments
- 2-280-50 Suspending an Assistance Agreement
- 2-280-60 Terminating an Assistance Agreement for Cause
- 2-280-70 Terminating an Assistance Agreement for Convenience

### **2-280-00 Purpose**

The purpose of this chapter is to explain the policies and procedures the awarding office may take if a recipient materially fails to comply with any condition of an assistance award received from the Office of Surface Mining Reclamation and Enforcement (OSMRE). It also explains how OSMRE may agree to terminate an agreement for mutual convenience.

### **2-280-10 Policy**

These policies are found in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).

### **2-280-20 Requirements of the Agreement Are Not Met**

- A. OSMRE may determine a recipient is in noncompliance if they or their subrecipient materially fails to comply with any terms of assistance agreement. This may be because of a Federal law or regulation, a commitment, or assurance in the application or approved plan, a condition in the award, or any other requirement.
- B. If a recipient is in noncompliance and does not appear to be taking steps to resolve the problem, the awarding office may take one or more of the following actions as appropriate:
  - 1. OSMRE may temporarily stop cash payments until the recipient corrects the problem or may take more severe enforcement action. Alternatively, OSMRE may review each drawdown request the recipient makes and decide whether to approve it for payment.
  - 2. Disallow both the Federal and non-Federal expenditures for all or part of the cost of the activity not in compliance. When the awarding office disallows a cost, the



recipient cannot spend Federal funds for that cost and if they spend non-Federal funds for it, they cannot claim them as match.

3. Wholly or partly suspend the current award. Suspension means OSMRE temporarily stops a recipient's authority to obligate additional OSMRE funds under this assistance agreement. The awarding office will suspend the assistance agreement until the deficiency is corrected or the awarding office decides to terminate the agreement.
  4. Wholly or partly terminate the current award. Termination means this assistance agreement ends immediately.
  5. Do not approve any future assistance awards for the program.
  6. Take other remedies that may be legally available.
- C. In addition to these remedies, OSMRE may also consider debarment, which prohibits an entity or a person from receiving any Federal financial assistance. See 2-110 of this manual for more information on debarment and suspension.

#### **2-280-30 Prior to Reducing, Suspending, or Terminating an Agreement**

- A. When deficiencies are identified, OSMRE must work with the recipient to resolve the issue. If the deficiency cannot be resolved, the awarding office, which awarded the assistance agreement, must propose an enforcement action to the appropriate Regional Director (RD) and obtain their concurrence. The region must also coordinate proposed enforcement actions with the Assistant Director, Program Support (AD-PS) and Division of Financial Management (DFM).
- B. The awarding office must send the recipient written notice of the proposed action. The notice must inform the recipient that reduction, suspension, or termination of the grant agreement will begin no earlier than 30 days after the date of the notice if remedial action is not taken within that period.
- C. The awarding office must give the recipient opportunity to consult with OSMRE during the 30- day notice period.
- D. If the recipient does not take any remedial action or appeal the decision within the 30- day notice period, the awarding office will take action to reduce, suspend or terminate the assistance agreement.
- E. Recipient may appeal the decision of the RD to the Director of OSMRE in writing. Recipient must explain the reasons why they are requesting review. OSMRE must receive the appeal within 30 days of the written notice.

- F. Recipient may appeal the Director's decision to the Department of the Interior's Office of Hearings and Appeals in writing, outlining the reasons for requesting review. Recipient must file this appeal within 30 days of the Director's decision.

#### **2-280-40 Stop Payments**

- A. The awarding office must coordinate with DFM when it first considers stopping payments on an assistance agreement and throughout the process of deciding and carrying out the suspension.
- B. The awarding office must inform the recipient they have decided to withhold payments on the assistance agreement. OSMRE must tell the recipient the date when payments will stop.
- C. DFM will work with Treasury to stop payments.
- D. When the issue has been resolved or the deficiency corrected, the awarding office will pay out all funds that was withheld during the period of the suspension.

#### **2-280-50 Suspending an Assistance Agreement**

- A. The awarding office will suspend any pending actions as of the effective date of the suspension and disallow any costs obligated or incurred.
- B. Costs properly incurred before the effective date of the suspension will be allowed. Costs must have been necessary for the immediate needs of the program. They cannot have been incurred in anticipation of the suspension.
- C. It is required for the recipient to refund any unobligated Federal assistance funds they may have on hand.
- D. The suspension will remain in effect until the deficiency is corrected or the awarding office takes further enforcement action.

#### **2-280-60 Terminating an Assistance Agreement for Cause**

- A. OSMRE may terminate an assistance agreement for cause in any of the following circumstances. The awarding office may terminate the whole agreement in its entirety or in part:
  - 1. Materially failed to comply with the terms and conditions of the agreement and resolution does not seem probable.
  - 2. May terminate all or part of recipient's Regulatory grant if approval of all or part

of the Regulatory program is withdrawn or if the awarding office takes over all or part of the regulatory program.

3. OSMRE may terminate recipient's Abandoned Mine Land (AML) grant if approval of the reclamation or Regulatory program is withdrawn.
- B. Costs incurred after termination of an award are not allowable except as follows:
1. Costs which OSMRE specifically authorize are allowable.
  2. Other costs after termination are allowable if they result from obligations which recipient properly incurred before the effective date of the termination and were not able to cancel. The obligations cannot have been in anticipation of the termination.
- C. Any unobligated funds must be returned to OSMRE.

#### **2-280-70 Terminating an Assistance Agreement for Convenience**

- A. Recipient may terminate an assistance agreement for convenience by sending a written notice to OSMRE. The notice must state the effective date and explain the reasons for the termination. If recipient is only terminating part of the agreement, they must identify the part to be terminated. If recipient proposes a partial termination and the awarding office determines the remaining part of the award will not accomplish its purpose, then the awarding office may terminate the entire award.
- B. OSMRE may terminate an assistance agreement with recipient's consent if both parties agree continuing the project or program would not produce benefits worth the additional costs. The awarding office may terminate the entire agreement or a part of it. Both parties must agree upon the termination conditions, including the effective date. For a partial termination, both parties must also agree on the part of the agreement to be terminated.
- C. OSMRE will process a termination for convenience as an amendment to the assistance agreement. The amendment must be approved by the authorized official in the awarding office.
- D. Recipient must not incur costs after termination of an assistance agreement. Such costs are not allowable unless the awarding office approves them or recipient properly incurs the obligation before the termination date.
- E. After termination, OSMRE must pay the recipient for the Federal share of valid obligations. Recipient must return any unobligated funds to OSMRE.

## Annex F: FFAM Part 3 – Allowable Costs

### CHAPTER 3-100 COST PRINCIPLES

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- 3-100-00 Purpose
- 3-100-10 Policy
- 3-100-20 Allowable Costs
- 3-100-30 Leasing Facilities and Equipment
- 3-100-40 Costs that Require Prior Approval
- 3-100-50 Unallowable Costs

#### **3-100-00 Purpose**

The purpose of this chapter is to explain the basic principles of allowable costs for all assistance agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

#### **3-100-10 Policy**

- A. The Office of Management and Budget (OMB) has established principles for determining allowable costs for Federal assistance agreements. More information about allowable costs can be found in the Code of Federal Regulations (CFR) entitled *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* at [2 CFR Part 200](#).
- B. OSMRE includes the appropriate cost principles by reference in each assistance agreement that is awarded. These cost principles apply to activities as a recipient and to any subrecipients or cost-type contractors who receive funds under an assistance agreement. Recipients must cite the appropriate principles in the subgrant or contract award.

#### **3-100-20 Allowable Costs**

- A. Refer to 2 CFR 200 Subpart E.
- B. Costs approved by the awarding office in the assistance agreement are allowable.
- C. Generally, costs are allowable if they meet all the following standards:
  - 1. Costs must be allowable, allocable, necessary, and reasonable for the proper and efficient execution of the project.

2. In accordance with the assistance agreement and the most recent approved project budget.
3. May not be prohibited by Federal, state, or local statutes or regulations.
4. Costs must be applied consistently with recipient's accounting procedures.
5. May not be included as part of any other Federally financed program.
6. The costs must be net costs after deducting all applicable credits.
7. Comply with any budgetary or other types of restrictions on expenses the awarding office may have established.
8. Costs must be incurred and the work performed within the dates of the performance period. Pre-agreement or proposal costs may be allowable, but only if the assistance agreement specifically provides for them.
9. The costs must be fully documented.

### **3-100-30 Leasing Facilities and Equipment**

Generally, a recipient owns their facilities and equipment and charge the costs of them to their assistance agreement through depreciation or use charges. However, in some cases leasing facilities or equipment is necessary or more economical. In the following examples, leasing may be appropriate and allowable depending on the specific circumstances:

- A. Leasing will reduce expenses charged to the assistance agreement for direct or indirect costs.
- B. Recipient's project has a short duration. No owned space or equipment is available.
- C. Cannot meet specific program objectives or requirements with facilities recipient owns.
- D. Recipient cannot efficiently accommodate an increase in workload volume by modifying or augmenting facilities they own.

Recipient can use the following types of leases:

- A. In a short-term lease, the cumulative term is two years or less for the use of the equipment, or five years, or less for occupancy of the facilities.
- B. In a long-term lease, the cumulative term of the use or occupancy is two years, or more for equipment, and five years or more for facilities. If recipient leases equipment or facilities as a short-term lease but then extends past the two- or five-year threshold, then the lease would become a long term. In this case, recipient would treat the lease as

short-term until after the two or five-year point is reached.

- C. In a sale and leaseback arrangement, recipient's organization sells the property they own and then leases it back from the purchasing organization.
- D. In a less-than-arms-length lease, one party to the lease agreement is able to control or substantially influences the actions of the other. The following are examples of such leases:
  - 1. Agreements between divisions of an organization.
  - 2. Agreements between organizations under common control through common officers, directors, or members.
  - 3. Agreements between an organization and a director, trustee, officer, key employee of the organization, or immediate family. This may also be through corporations, trusts, or similar arrangements in which they hold a controlling interest.

### **3-100-40 Costs that Require Prior Approval**

- A. [2 CFR 200 Subpart E](#) shows that some costs, including equipment, are only allowable with prior approval. If a recipient included these costs in their application budget, OSMRE approval of recipient's assistance agreement or amendment constitutes the approval of these costs. If these costs are not in the recipient's approved budget, they must request the awarding office's approval before they incur these costs.
- B. When recipients treat these costs as indirect costs (or, in the case of a state government, include them in a statewide cost allocation plan), the awarding office will consider that approval of recipient's indirect cost rate or cost allocation plan by the cognizant Federal agency constitutes OSMRE's approval of the costs. Recipient does not have to request OSMRE specific approval.
- C. Recipient must request prior approval before spending funds on any equipment, real property, or improvements to either. The use of the equipment must be for the authorized purposes of the project during the period of performance or until the equipment/property is no longer needed for the purposes of the project. The recipient must not encumber the property without approval of the Federal awarding agency or pass-through entity (2 CFR 200.311/313).
  - 1. General purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.
  - 2. Special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$10,000 or more have the prior written approval of the Federal

awarding agency or pass-through entity.

3. Improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity ([2 CFR 200.439](#)).

### **3-100-50 Unallowable Costs**

- A. Recipients must apply the standards of the applicable OMB cost principles to determine whether a cost is unallowable. However, recipients must consider the specific circumstances in each case when they apply the cost principles.
- B. The following list provides some examples of unallowable costs:
  1. Losses from uncollectible accounts, other claims, or any related costs.
  2. Payments to a contingency reserve or any similar provision for unforeseen events.
  3. Contributions and donations.
  4. Amusements (alcohol), social activities, and related incidental costs.
  5. Costs resulting from violation of, or failure to comply with, Federal, state, and local laws and regulations, including fines, penalties, damages, attorney fees and litigation costs, and other settlements. These costs are also unallowable if they result from failure to comply with the terms of the assistance agreement or approved program.
  6. Cost of general state or local government, including the following costs:
    - a. Salaries and expenses of the office of the governor of a state or the chief executive of a political subdivision.
    - b. Salaries and other expenses of the state legislature or similar local governmental bodies such as county supervisors, city councils, or school boards, whether incurred for purposes of legislation or executive direction.
  7. Interest on borrowed capital (however represented), bond discounts, cost of financing and refinancing operations, and related legal and professional fees, unless Federal legislation authorizes them.
  8. Certain influencing activities associated with obtaining a grant.

9. Costs of one assistance agreement that exceeded the total Federal funding available under that agreement cannot be charged to other assistance agreements.
10. Individual memberships, such as bar association and professional engineering society dues and license fees are unallowable. However, costs for agency membership in civic, business, technical and professional organizations may be allowable if they are necessary for the assisted activity.



## **CHAPTER 3-110 INDIRECT COST RATES**

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3-110-00 Purpose

3-110-10 Policy

3-110-20 Indirect Costs Definition

3-110-30 Establishing an Indirect Cost Rate

3-110-40 Approved Indirect Cost Rate Documentation

### **3-110-00 Purpose**

The purpose of this chapter is to explain the basic principles of indirect costs for all assistance agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). These principles also apply to subgrants and cost-type contracts that a recipient awards under OSMRE assistance agreements.

### **3-110-10 Policy**

The Office of Management and Budget (OMB) has established principles for determining allowable costs for all OSMRE assistance agreements. These principles cover indirect as well as direct costs. This information can be found in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [2 CFR Part 200](#).

### **3-110-20 Indirect Costs Definition**

- A. Indirect costs are common or joint-purpose costs that benefit more than one office, agency, or program. Rather than incur excessive costs to trace these expenses to the specific program they benefit, recipients will normally charge indirect costs to Federal assistance agreements by prorating them based on an indirect cost rate. Some examples of functions which organizations may choose to treat as indirect costs are accounting, facility maintenance, and human services.
- B. Recipients should provide for the full reimbursement of their organization's indirect costs under an approved indirect cost rate.

### **3-110-30 Establishing an Indirect Cost Rate**

- A. Recipient's indirect cost rate for all Federal assistance is reviewed, negotiated, and approved by their cognizant Federal agency. A recipient's cognizant agency, as assigned by OMB, is generally the Federal agency with the largest amount of funding for their organization.
- B. If recipient does not have an approved indirect cost rate, they must submit an initial

indirect cost proposal to their Federal cognizant agency except as provided in [2 CFR 200.414](#).

- C. Recipients should base their cost proposal on their organization's actual costs for their most recently completed fiscal year. However, if a recipient is aware of factors that may result in a significant change during the agreement period, they should base their proposal on projected costs for that fiscal year.
- D. Requirements for development and submission of indirect cost rate proposals are contained in the applicable OMB cost principles listed above.
- E. There is also the de minimis rate of up to 15% of the Modified Total Direct Cost (MTDC).

### **3-110-40 Approved Indirect Cost Rate Documentation**

Recipients must include a copy of their current indirect cost agreement signed and approved by the cognizant Federal agency with their assistance application.

- A. If a recipient's cognizant Federal agency delays approval of their agreement, the recipient may alternatively include in their application, a copy of the timely indirect cost rate application that was sent to their cognizant agency.
- B. Recipients should be familiar with their organization's indirect cost agreement and what costs are included in it. Recipients must ensure that they do not charge expenses as direct costs which are already being charged to the assistance agreement as indirect costs. The awarding office may review the actual costs to ensure that they are being charged appropriately in accordance with the recipient's indirect cost agreement.
- C. The awarding office will maintain a copy of the recipient's indirect cost agreement in the official assistance agreement file to support the award.

## CHAPTER 3-120 SUBRECIPIENTS AND CONTRACTORS

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- 3-120-00 Purpose
- 3-120-10 Policy
- 3-120-20 Prior Approval for Subgrants or Transfers
- 3-120-30 Requirements for Subgrants or Transfers
- 3-120-40 Awarding a Subgrant
- 3-120-50 Contractor vs. Subaward

### **3-120-00 Purpose**

The purpose of this chapter is to provide the requirements and guidance relating to subawards and contracts under an OSMRE assistance agreement. This chapter will help determine if an agreement between a pass-through entity and another recipient should have a relationship as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. The characteristics listed below may not be present in all cases, leaving the pass-through entity to make the judgment in classifying each agreement as a subaward or a procurement contract.

### **3-120-10 Policy**

These policies are found in the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95- 224) and the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* [2 CFR Part 200 Subpart D](#), and [2 CFR 200.331 - 200.333](#), Subrecipient Monitoring and Management, as well as [2 CFR 200.317 - 200.327](#), Procurement Standards, to ensure a recipient's organization abides by all federal grant requirements.

### **3-120-20 Definition of Subaward and Contract**

Subawards, as defined in [2 CFR Part 200.331](#), are provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Contracts, as defined in [2 CFR Part 200.331](#), are initiated for the purpose of obtaining goods and services for the recipient's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the recipient and a contractor are when the contractor:

1. Provides the goods and services within normal business operations.
2. Provides similar goods or services to many different purchasers.
3. Normally operates in a competitive environment.

4. Provides goods or services that are ancillary to the operation of the Federal program.
5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

### **3-120-30 Subaward Requirements**

When a recipient's organization provides a subaward to carry out part of the Federal program, the recipient becomes a Pass-Through Entity, and must abide by the requirements for pass-through entities as outlined in [2 CFR 200.332](#). In addition to these requirements, as a pass-through entity the recipient must:

1. Follow state/tribal law and procedures when they award and administer subgrants or financial assistance to local and tribal governments (when the recipient is a state or tribe).
2. Review the flow down requirement of the Terms and Conditions of the award and what effect that has on the subrecipient.
3. Check subrecipients in the Applicant Violator System (AVS), as applicable.
4. Record the subaward in the federal funding subaward reporting system, currently at [fsrs.gov](http://fsrs.gov).
5. Ensure the subrecipient has no exclusions on the federal system for award management website, [SAM.gov](http://SAM.gov).
6. Apply substantially the same standards of timing and amount for OSMRE cash advances to the recipient to any advances of assistance funds made to subgrantees.

### **3-120-40 Subaward Requirements for Subrecipients**

All requirements that pertain to the recipient, as the pass-through entity, will be requirements for the sub-awardee.

### **3-120-50 Approval of Subawards and Contracts**

Recipients must perform a substantive role in carrying out project or program activities under an assistance agreement that OSMRE awarded. The awarding office may authorize the recipient to transfer substantive programmatic work or to award financial assistance only if the recipient will continue to perform at least one of the following roles:

1. Principal performer of project activities.
2. Primary beneficiary of Federal financial assistance.
3. Overall administrator of a program in which third parties perform activities or receive financial assistance.

Generally, the awarding office must review the specific circumstances of each application or request involving the transfer of work or the award of financial assistance to determine whether approval would violate the rule in the previous paragraph. However, if the proposed transfer falls into one of the following classes, OSMRE may assume that approval would be permissible:

1. Contract for construction services under an assistance agreement for construction. Construction includes alteration or renovation of real property.
2. Subgrant or contract for projects if OSMRE awarded the assistance agreement under a statute or regulation explicitly intending that the recipient's primary responsibility is to select projects, award and administer grants, contracts, or cooperative agreements.
3. Transfer activities and funds to a collaborating or cooperating organization if OSMRE awarded the assistance agreement under a statute or regulation explicitly intending such collaboration or cooperation.
4. Transfer activities and funds to a college, university, hospital, or government entity if recipient is closely affiliated but separately incorporated organization whose primary purpose is to receive and administer gifts, grants, cooperative agreements, and contracts. An example is the transfer of funds to a state university from its affiliated research foundation.

OSMRE may limit the kind of third parties eligible to perform the work or receive financial assistance under the recipient's assistance agreement. However, the awarding office will not choose a specific entity and directly or indirectly require the recipient to transfer the work or award the assistance to that entity. Recipients must choose their subrecipient or contractor.

OSMRE will not require recipients to submit the contract or subgrant documents for prior approval.

### **3-120-60 Contract Requirements**

Ensure to thoroughly review [2 CFR 200.317 – 200.327](#), Procurement Standards, for a full detail of requirements for contracts on federal grant awards. Additional requirements (Build America Buy America (BABA), IJJA, etc.) may be addressed in the award NOFO.

### **3-120-60 Records Retention Requirements**

Please see [2 CFR 200.334](#) for retention requirements for records. Additional information can be found in [2 CFR 200 Subpart D](#), Post Federal Award Requirements, Record Retention and Access.

# **Annex G: FFAM Part 4 - Abandoned Mine Lands (AML) Grant Programs**

## **CHAPTER 4-100**

### **AML GRANT PROGRAMS OVERVIEW**

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- 4-100-00 Purpose
- 4-100-10 Policy
- 4-100-20 Abandoned Mine Land Fee-Based
- 4-100-30 Abandoned Mine Land Environmental Revitalization
- 4-100-40 Infrastructure Investment and Jobs Act

#### **4-100-00 Purpose**

The purpose of this chapter is to describe the Abandoned Mine Land (AML) grant programs awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). There are three total AML Grant programs, including AML fee-based, AMLER, and IJJA/BIL. This chapter will give a basic overview of each program. For more in depth explanations of an AML program please see that program's specific chapter.

#### **4-100-10 Policy**

Title IV of the Surface Mining Control and Reclamation Act (SMCRA), P.L. 95-87, as amended, established the AML program. It also established the AML Fund, supported by reclamation fees paid by current coal mining operations. It authorizes OSMRE to use funds from the AML Fund and Treasury to provide financial assistance to states and tribes to carry out their approved reclamation plans. Rules governing this program are found in OSMRE regulations at [30 CFR Parts 870 through 887](#). In 2006, amendments to SMCRA substantively changed the AML program (see *Federal Register* Vol. 73, No. 221, November 14, 2008).

#### **4-100-20 AML Fee-Based**

Title IV of SMCRA created the AML Reclamation Program which has been funded by a fee assessed on each ton of coal produced since August 3, 1977. As originally enacted, SMCRA authorized collection of the fee for 15 years. To sustain the program, Congress has amended SMCRA to change the structure of the fee three times and reauthorize fee collection eight times since its inception. Most recently, this was done in 2021 under the authority of Public Law No. 117-58 which adjusted the fee structure and extended OSMRE's fee collection authority through September 30, 2034.

Each year, OSMRE calculates the specific proportion of AML fee-based grant funding to be awarded to each state and tribe. The 2006 SMCRA Amendments mandated this AML grant distribution process. The distribution is determined using a pre-set formula authorized by SMCRA. This formula considers AML fee collections, historic coal production, the various shares within the AML Fund (i.e., State/Tribal Share, Federal Expense Share, Historic Coal Share), the minimum program supplemental adjustments, the AML inventory and, any other special Appropriations Act provisions (e.g., sequestration).

#### **4-100-30 Abandoned Mine Land Economic Revitalization**

Congress has appropriated funding for the Abandoned Mine Land Economic Revitalization (AMLER) Program (previously known as the AML Pilot Program) on an annual basis since Fiscal Year (FY) 2016. The intent of the program is to explore and implement strategies that return legacy coal mining sites to productive uses through economic and community development. The AMLER Program supports local investment opportunities that provide for sustainable long-term rehabilitation of coalfield economies. OSMRE administers the AMLER Program and provides eligible states and Tribes with AMLER funds and guidance on project eligibility criteria and reporting requirements. Please see the [Annual AMLER Guidance](#) for more information.

#### **4-100-40 Infrastructure Investment and Jobs Act**

IJA, or also known as BIL, authorized and appropriated \$11.293 billion for deposit into the Abandoned Mine Reclamation Fund. OSMRE will distribute approximately \$725 million a year to eligible States and Tribes on an equal annual basis over a 15-year period. BIL funds will expand the AML Reclamation Program to fund the activities described in the BIL, in addition to those already funded under Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended. The objective of BIL AML is to address coal AML emergencies, physical hazards resulting from legacy coal mining that pose a threat to public health, safety, and the environment (including acid mine drainage), and water supplies that have been adversely affected by legacy coal mining. In addition, the BIL encourages States and Tribes to prioritize projects that provide employment for current and former employees of the coal industry.

#### **4-100-50 Build America Buy America**

AML grant recipients will be required to comply with all applicable Federal grant award requirements. BIL-funded projects are subject to the Build America, Buy America (BABA) Act, which was enacted as part of IJA/BIL.

The BABA Act allows the head of each Federal agency to waive its requirements under certain circumstances:

1. The first waiver applies to small grants that do not meet the current Simplified Acquisition Threshold of \$250,000.00 and are not expected to exceed the Simplified Acquisition Threshold for the life of the grant.
2. The second waiver applies to de minimis purchases for otherwise covered infrastructure projects, totaling up to 5 percent of the total applicable project costs, not to exceed a dollar amount of \$1,000,000.00.

The small grants and de minimis purchases waivers expire on February 20, 2028. BABA Act terms and conditions must be included in all subawards and all contracts or purchase orders for work or products unless an active BABA waiver applies. For current DOI BABA Act waivers, please visit: [DOI General Applicability Waivers](#).

Additional general information about the BABA Act is available from the DOI Office of Grants Management at: [“Buy America” Domestic Sourcing Guidance and Waiver Process for DOI Financial Assistance](#).

#### **4-100-60 AML Program Reporting**

States/Tribes will be required to report on the performance and work associated with awarded projects in annual Performance Progress Report. A report is required for each separate grant.

SF-425 Federal Financial Report submitted annually, unless stated otherwise in award agreement. A report is required for each separate grant.

#### **4-100-70 AML Program Closeout**

All funds should be de-obligated prior to closeout and show a balance of zero. Closeout package is due 120 days after the end of the grant performance period. For a more in-depth explanation of the closeout process see Chapter 4-240 of this manual. A closeout is required for each separate grant. The closeout package should include:

1. Final financial report (SF-425 and SF-425A). There cannot be any unliquidated obligations on the final report. All obligations must be paid before closeout.
2. Final performance report.
3. Report of Government Property if property was held or acquired under this grant. Report property inventory on the Tangible Personal Property Report (SF-428) that allows for any other inventory format acceptable to the awarding office.



## CHAPTER 4-105 AML ACTIVITIES FOR UNCERTIFIED PROGRAMS

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### **4-105-00 Purpose**

The purpose of this chapter is to describe the Abandoned Mine Land (AML) grants to uncertified states and tribes awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). A program is uncertified if the state or tribe has not certified that all the coal priorities on eligible lands and waters within its borders or jurisdiction are completed. If an applicant has certified completion of these priorities, this chapter does not apply, and should use Chapter 4-300 of this manual instead.

### **4-105-10 Policy**

Title IV of the Surface Mining Control and Reclamation Act (SMCRA), P.L. 95-87, as amended, established the AML program. It also established the AML Fund, supported by reclamation fees paid by current coal mining operations. It authorizes OSMRE to use funds from the AML Fund and Treasury to provide financial assistance to states and tribes to carry out their approved reclamation plans. Rules governing this program are found in OSMRE regulations at [30 CFR Parts 870 through 887](#). In 2006, amendments to SMCRA substantively changed the AML program (see *Federal Register* Vol. 73, No. 221, November 14, 2008).

### **4-105-20 Eligibility**

- A. Lands and waters are eligible for reclamation with AML funds if they meet all the following conditions:
  - 1. They were mined for coal or affected by coal mining or processing.
  - 2. They were mined prior to August 3, 1977, and left in an un-reclaimed or inadequately reclaimed state.

3. There is no continuing responsibility for reclamation by the operator or any other party under state or Federal laws.
  4. Bond forfeitures on such lands and waters are eligible only if the amount forfeited is insufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund or any prior balance replacement funds provided under 30 CFR 872.29 may be used.
- B. Other lands and waters may be eligible in the following circumstances. In each of these cases, the site must be a Priority 1 or 2 or an emergency.
1. Lands and waters are also eligible if they were mined between August 3, 1977, and the date on which the Secretary approved a state's regulatory program (Interim Program Sites).
  2. Lands and waters that were mined and abandoned between August 3, 1977 and November 5, 1990, that the surety of the mining operator became insolvent during this period, and that, as of November 5, 1990, funds immediately available from proceedings relating to the insolvency, or from any financial guarantee, or other source are not sufficient to provide for adequate reclamation, or abatement at the site. (Insolvent Surety Sites)
  3. Any money available from other sources, or ultimately recovered from responsible parties for interim program or insolvent surety sites must be used to cover the cost of reclamation or transferred to the appropriate AML account.
  4. BIL funding can only be used to fund water supply restoration projects on interim program or insolvent surety sites where the State/Tribe determines that the adverse effects on the water supply occurred predominantly prior to the dates/timeframes set forth in 402(g)(4)(B) of SMCRA.
  5. Federal lands managed by the U.S. Forest Service are only eligible if they were mined and abandoned before August 28, 1974. Federal lands managed by the Bureau of Land Management are eligible if they were mined and abandoned before November 26, 1980.
- C. Lands are also eligible if they were mined or processed for minerals other than coal and abandoned before August 3, 1977, if there is no continuing reclamation responsibility under state or other Federal laws. They must meet the requirements of Section 409.
- D. Lands eligible for re-mining may also be eligible for AML funds after the release of bond or if such bonds are forfeited and the amount of such bond or deposit is not sufficient to provide for adequate reclamation.

#### **4-105-30 Determination and Documentation for Site Eligibility**

- A. Recipients are responsible to make eligibility determinations under their approved AML Plan. Eligibility determinations must be signed by their Attorney General's Office or by their legal counsel. This eligibility determination authority may be delegated from the State Attorney General to an appropriate management official of the approved State Program. The delegated authority will be represented by a letter of delegation from the State Attorney General Office to the State or Tribe requesting this delegation.
- B. Recipients must include the eligibility determination<sup>3</sup> in their request for OSMRE's "Authorization to Proceed (ATP)" with reclamation of the project. Recipients must keep eligibility determinations in the project files.
- C. OSMRE may review recipients' project files and eligibility determinations as a part of oversight. If the awarding office determines that a recipient funded an ineligible project, then OSMRE will take appropriate procedures to recover expended funds.

#### **4-105-40 AML funds for Ineligible Sites**

Recipients may need to affect property which is not eligible in order to access an eligible site or complete reclamation on an eligible site. Recipients must limit reclamation on these affected sites to repairing the damage caused by using them for AML reclamation activities. If reclamation activities on ineligible property are needed to repair damages caused by accessing an eligible site, they must fully document and justify these activities in the project narrative before the request of an ATP from the awarding office.

#### **4-105-50 Priorities for Coal Reclamation**

This section does not apply to Bipartisan Infrastructure Law (BIL) financial assistance, see Chapter 4-650-40 for BIL prioritization. Expenditures of State and Tribal Share and Historic Coal Funds for coal reclamation must reflect the following priorities in order:

- A. Priority 1 is the protection of public health, safety, and property from extreme danger from the adverse effects of coal mining practices, including the restoration of adjacent land, water resources, and the environment. OSMRE defines adjacent as geographically contiguous or touching the Priority 1 site at a boundary or point.
- B. Priority 2 is the protection of public health and safety from the adverse effects of coal mining practices, including the restoration of adjacent land, and water resources and the environment.

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<sup>3</sup> And any letter of delegation, if applicable.

- C. Priority 3 is the restoration of land and water resources, and the environment previously degraded by adverse effects of coal mining practices. Recipients may expend State or Tribal Share or Historic Coal Funds for Priority 3 lands and waters if any of the following conditions applies:
1. Recipients have completed all the Priority 1 and Priority 2 reclamation within the jurisdiction of their state or tribe.
  2. The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for past, present, or future Priority 1 or Priority 2 reclamation projects. Also, one of the following conditions must apply:
    - a. The expenditure must facilitate the Priority 1 or Priority 2 reclamation.
    - b. The expenditure must provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of the state or tribe.
  3. The expenditure for Priority 3 reclamation is being made as part of an Appalachian Clean Streams project, a Watershed Cooperative Agreement project, a project authorized under the Enhancing AML Rule, or any AML sites reclaimed under the re-mining incentives provided under section 415 of SMCRA, as revised by the 2006 amendments.

#### **4-105-60 Water Supply Restoration Eligibility**

- A. Section 403(b) of SMCRA allows recipients to expend funds to protect, repair, replace, construct, or enhance facilities related to water supply, including water distribution facilities and treatment plants, in order to replace water supplies adversely affected by coal mining practices.
- B. Recipients may use State or Tribal Share, Historic Coal Funds, BIL funds, and/or Prior Balance Replacement funds for water supply restoration projects.
- C. Projects eligible for funding as water supply projects include the following:
  1. Sites impacted by coal mining prior to August 3, 1977.
  2. Sites impacted by coal mining during the period beginning on August 3, 1977, and ending on or before the date on which the Secretary approved a state program pursuant to section 503 of SMCRA.
  3. Sites impacted by coal mining during the period beginning on August 3, 1977, and ending on or before November 5, 1990, if the surety of the mining operator became insolvent during this period.

The adverse effects of coal mining practices need not have occurred entirely within these periods as long as the state or tribe determines that they occurred predominantly in these periods.

#### **4-105-70 Non-Coal Reclamation Eligibility**

- A. Recipients may request funds to reclaim eligible non-coal problems as provided in section 409 of SMCRA and [30 CFR 875](#). Non-coal projects must protect public health, safety, and property from extreme danger of adverse effects of mining practices. Lands and waters which are adjacent to sites with extreme dangers are not eligible for AML funding.
- B. The request must be made by the governor of the state or the governing body of the tribe using the following procedures:
  - 1. The state or tribe must submit a letter request signed by the governor or tribal governing body to the appropriate OSMRE office. Recipients must include it in their complete grant application, even though the letter may be addressed to the Secretary of the Interior or the Director of OSMRE.
  - 2. Since OSMRE approval or disapproval of the grant application is the response to a recipient's request, there will not be a separate letter response.
  - 3. If a recipient is adding a non-coal project to an existing grant, they must send the letter request signed by the governor or tribal governing body to the awarding office as soon as the need for the project is identified. The request and OSMRE written approval will follow the letter approval process for making a scope change described in Chapter 4-220 of this manual.
- C. Recipients may only use State or Tribal Share or Historic Coal Funds for non-coal reclamation.

#### **4-105-80 Reclamation Expenses Eligibility**

Recipients may use AML funds for activities which are necessary to reclaim eligible lands. The following OSMRE decisions on the use of AML funds for specific types of reclamation activities are provided as examples for determining whether an activity is allowable:

- A. Repairs to structures. Costs of repairs to structures damaged by subsidence or other adverse effects of past mining are generally not eligible. Section 407(h) of SMCRA prohibits the use of Title IV funds to pay housing construction costs. AML funds may be used to repair structures only if the repairs are a direct and necessary part of the project reclamation. For example, foundation reinforcement may be funded only as needed to support the foundation during reclamation activities, preventing damage to the structure

and harm to the workers (see SMCRA Section 412).

- B. Asbestos removal from structures. AML funds may not be used to remove asbestos insulation from hot water pipes in houses that were originally built by a mining company for its employees. Houses built for company employees were not directly connected to coal mining or processing, so removing asbestos insulation from the houses is not part of AML reclamation.
- C. Moving or relocating structures. Subsidence or other hazards may occasionally make it necessary to move a structure in order to prevent further damage or conduct effective reclamation at the site. In such situations, recipients should do the following:
  - 1. Take all necessary steps to prevent the structures from sustaining further damage, including shoring up the structure, and restoring the site to achieve the previous load bearing capacity. Some minimal corrective action in the foundation may be appropriate if the damage is not attributable to other problems. The objective is to leave the site in as safe a condition as possible, given the circumstances.
  - 2. Advise occupants that the structure may be unsafe or borderline and inform local authorities of the conditions. Do not order occupants to vacate.
  - 3. Make all reasonable efforts to reclaim the site without moving the structure. If there is no other way to reclaim the site, the structure may be moved, but only after the OSMRE awarding office approves a written justification. Recipients should move structures only as a last resort and only if the option is cost-effective.
- D. Temporary lodging expenses. Reclamation activities are limited to abating, preventing, or controlling the primary cause of the hazard. The costs to treat secondary effects of past coal mining go beyond the scope of Title IV. Temporary lodging expenses may be funded only if the residents must be removed to reclaim the site and only for a limited time. The OSMRE awarding office must approve payment of temporary lodging expenses on a case-by-case basis.
- E. Claims for damages resulting from AML reclamation. Where damages occur to adjacent property as a result of AML reclamation or where claims are made for loss of business or damages to personal property or where there are other claims relating to the negligence of parties involved in the AML reclamation, recipients may not settle the claims. Recipients must make a summary report of their investigation of the claim and send it to the OSMRE office which awarded the grant. The awarding office must immediately send a report to the Department of the Interior, Office of the Solicitor, Division of Mineral Resources, Branch of Surface Mining, for definitive advice or action. The solicitor can determine whether claims may be covered under the Tort Claims Act, contractor liability

insurance, subsidence insurance, or other means and could therefore result in litigation.

#### **4-105-90 Requirements for Coal Extraction Funded Projects**

If a Title IV AML reclamation project will use government financing for less than 50% of the total cost because of planned coal extraction, the following rules apply:

- A. Recipients must consult with the Title V regulatory authority to make the following determinations:
  - 1. Determine the likelihood of coal being mined on the site under a Title V permit.
  - 2. Likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems at the site.
  - 3. Reclamation activities at the site might adversely affect nearby or adjacent mining activities.
  
- B. If recipient decides to proceed with the reclamation project after this consultation, the recipient and the regulatory authority must concur in the following determinations:
  - 1. Determine the limits on any coal refuse, waste, or deposits which can be extracted under the Federal and state regulations.
  - 2. Delineate the boundaries of the AML project.
  
- C. Recipients must keep the determinations made in sections A and B above in the project file. They must document who made the determinations and the information that was considered.
  
- D. Recipients must complete the following special requirements for each project:
  - 1. Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance.
  - 2. Ensure that the reclamation project is conducted in accordance with the requirements for AML reclamation projects in [30 CFR Part 874](#).
  - 3. Develop site-specific reclamation requirements, including performance bonds when appropriate.

4. Require the contractor to provide documents that clearly authorize the extraction of coal and the payment of royalties before reclamation begins.
- E. If the reclamation contractor extracts coal beyond the limits of the incidental coal as specified in the determinations, they must obtain a permit under Title V of SMCRA. See the regulations at [30 CFR Part 874.17](#) for more information.

#### **4-105-95 Unused AML Fee-Based Funds**

- A. Generally, unused funds remain available for award to a state or tribe for a future grant. Unused funds include funds distributed to a recipient but not awarded in a grant and funds awarded in a grant but not spent.
- B. However, there are two exceptions to this general rule. In the following situations, OSMRE will recover funds and redistribute them to other states and tribes:
  1. OSMRE will move unused state or tribal Share Funds in accordance with section 402(g)(1)(D) of SMCRA. If any State or Tribal Share Funds are not expended within three years after the date they are first awarded in a grant, the awarding office will move them to historic coal funds.
  2. Similarly, OSMRE will move any State or Tribal Share Funds which have not been awarded in a grant within five years of their distribution to historic coal funds. The awarding office will distribute funds moved to historic coal to eligible states at the next annual distribution.



## **CHAPTER 4-110**

### **ANNUAL DISTRIBUTION OF TITLE IV GRANT FUNDS**

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- 4-110-50 Annual AML Mandatory Distribution Procedures
- 4-110-60 Distribution of Appropriated Title IV Funds

#### **4-110-00 Purpose**

The purpose of this chapter is to describe the process for distributing Title IV grant funds. The annual distribution process identifies the total Abandoned Mine Land (AML) funding available for a fiscal year, which types of AML funds are included, and how much is available to each eligible state and tribe. After this process is completed, the funds identified for a state or tribe are available for the Office of Surface Mining Reclamation and Enforcement (OSMRE) to award in a grant.

#### **4-110-10 Policy**

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95- 87, as amended, authorizes multiple types of AML funds. It establishes how they are distributed or appropriated and how to make them available to recipients with approved reclamation programs.

#### **4-110-20 Mandatory Distribution**

The mandatory annual distribution authorized by SMCRA is the source of most AML funding. AML fee-based funds do not have to be appropriated each year by Congress. These funds are “off budget” and not included in OSMRE’s annual funding request or subject to appropriations laws that provide most Federal funds.

#### **4-110-30 Title IV Funding for the Annual Distribution**

SMCRA authorizes a mandatory annual distribution for the following types of Title IV funds. Recipients must have an approved reclamation program to receive any of these funds:

- A. State or Tribal Share Funds.
  - 1. It is authorized in section 402(g)(1) of SMCRA. Its source is the AML Fund. It is abbreviated in OSMRE’s accounting system as SS.
  - 2. OSMRE distributes it only to uncertified states and tribes.

3. Each year OSMRE will distribute 50% of the reclamation fee collections for coal produced in the previous fiscal year (FY) in a state or on Indian lands within the tribe's jurisdiction.

B. Historic Coal Funds.

1. They are authorized in section 402(g)(5) of SMCRA. Its source is the AML Fund, and it is abbreviated as HC.
2. OSMRE distributes these funds to uncertified states and tribes. A recipient is eligible for historic coal if they have an inventory of unfunded Priority 1 and 2 coal problems greater than their State or Tribal Share Funding.
3. Total annual historic coal funding is 30% of total national reclamation fee collections for coal produced in the previous FY. It also includes 60% of any other revenues to the AML fund except interest from investment activities. It also includes money OSMRE transfers from State or Tribal Share after the awarding office distributes the equivalent amounts for Treasury Prior Balance Replacement Funds or Certified in Lieu Funds to certified states and tribes.
4. OSMRE divides total historic coal between the eligible states by formula based on historic coal mining production in each state before the passage of SMCRA.

C. Minimum Program Make-up Funds.

1. They are authorized in section 402(g)(8) of SMCRA. Its source is the AML Fund. Minimum Program Make-up Funds is the only mandatory distribution from the Secretary's 20% share of total reclamation fee collections. It is abbreviated as FE.
2. SMCRA sets a minimum funding level of \$3,000,000 for each uncertified state or tribal program. Recipients are eligible for Minimum Program Make-up Funds if they have an inventory of unfunded Priority 1 and 2 coal problems greater than the total funding a state or tribe would otherwise receive.
3. If an eligible state or tribe would otherwise receive less than \$3,000,000, OSMRE distributes enough Minimum Program Make-up Funds to increase recipient's total funding from all shares to \$3,000,000.

D. Prior Balance Replacement Funds.

1. They are authorized in section 411(h)(1) of SMCRA. Its source is the General Fund of the Treasury. OSMRE's accounting system abbreviates Prior Balance

Replacement Funds for uncertified states as HU, and for certified states and tribes as HS.

2. OSMRE distributes them to all states and tribes which had an unappropriated balance of State or Tribal Share Funds in the AML Fund as of October 1, 2007. Both uncertified and certified states and tribes may receive them.
3. Each state or tribe will receive total payments of prior balance replacement funds equal to its unappropriated prior balance. OSMRE divides the total into seven equal annual payments.
4. When OSMRE distributes Prior Balance Replacement Funds, the awarding office transfers the equivalent amounts in the AML Fund from State or Tribal Share to Historic Coal Funds. These funds will be distributed to eligible states and tribes in FY 2023 and in subsequent years.

E. Certified in lieu funds.

1. They are authorized in section 411(h)(2) of SMCRA. Its source is the General Fund of the Treasury. It is abbreviated as H2.
2. These are distributed to certified states and tribes only.
3. OSMRE distributes an amount equal to 50% of reclamation fee collections on coal produced in the previous FY in a state or on lands under a tribe's jurisdiction. These funds are distributed in lieu of the AML Fund moneys for the State and Tribal Share that they are no longer eligible to receive.
4. When Certified in Lieu Funds are distributed, OSMRE transfers the equivalent amounts in the AML Fund to Historic Coal and distribute them each year as part of the Historic Coal distribution.

F. Abandoned Mine Land Economic Revitalization (AMLER) funds.

1. Funding is allocated by Congress in the annual appropriations law (e.g. P.L. 117-328 - pages 313).
2. Funding is distributed to specifically identified states and tribes:
  - Alabama, Kentucky, Ohio, Pennsylvania, Virginia, West Virginia, Crow Tribe, Hopi Tribe, Navajo Nation
3. AMLER funds are annually appropriated by Congress, see the [AMLER Program page](#) for recent distribution information and Chapter 4-700 for detailed AMLER information.

G. Infrastructure Investment and Jobs Act (IIJA) / Bipartisan Infrastructure Law (BIL) funds.

1. These funds are authorized through the Infrastructure Investment and Jobs Act

(IIJA), Pub. L. No. 117-58.

2. Distributed to certified and uncertified states.
3. See chapter 4-650 for additional information on IIJA / BIL distribution.

#### **4-110-40 Offices Responsible for the Mandatory Distribution**

- A. The Director approves the distribution of Title IV funds.
- B. The Division of Reclamation Support (DRS) issues distribution instructions, reviews the final distribution calculation for correct application of policy and procedures, and recommends approval of the distribution to Division of Financial Management (DFM). DRS also has the lead role in answering policy questions regarding AML distribution.
- C. DFM determines the amount of Title IV funds to be distributed to each state and tribe in accordance with this chapter. DFM provides an electronic version of the annual distribution to be posted on the OSMRE website. DFM and the Office of Planning, Analysis and Budget (OPAB) coordinate to ensure that the allotments are properly recorded in the financial system. DFM has the lead role in answering questions regarding financial figures used in the distribution.
- D. OPAB works with the DFM to request a warrant from Treasury for the approved amount of Treasury funds to be distributed. OPAB allots all distributed funds to the regions.
- E. The regional directors (RDs) and the regional and field offices provide technical assistance and training to the states and tribes to explain the annual distribution process and calculations. They review the proposed distribution to verify that their states and tribes are properly handled. They answer questions about how the distribution affects each program and the options available to the state or tribe to use the distributed funds.
- F. The regional awarding offices administers the award and is the point of contact for all financial assistance information.

#### **4-110-50 Annual AML Mandatory Distribution Procedures**

- A. DRS will define the distribution parameters based on SMCRA and OSMRE regulations and directives. Before the reclamation fee collection cut-off date each FY, DRS will send DFM a memorandum with detailed procedures for calculating this FY's mandatory distribution.
- B. DRS will also send DFM an Enhanced Abandoned Mine Land Inventory System (e-AMLIS) report showing the total cost of the unfunded Priority 1 and 2 coal problem areas remaining in each state or tribal inventory. The report will be used to determine eligibility for Historic Coal and Minimum Program Make-up Funds.

- C. DFM will determine the amount of reclamation fee collections for coal produced in the previous FY for each state and tribe. In order to expedite the distribution, DFM will consider November 30 the end date for the fiscal year distribution cycle. Collections for each FY will be net of any adjustments made to prior year collections.
- D. Within seven days of the collections cut-off date, DFM will send their proposed distribution to DRS. DFM will prepare a distribution package showing distribution amounts, calculations, and supporting data.
- E. DRS will review the calculations to assure correct application of policies and parameters. DRS will also send the proposed distribution to the RDs for their review. DRS will work with DFM to resolve any concerns. Within seven days of receipt of the distribution package from DFM, DRS will prepare a memorandum outlining its acceptance of distribution calculations and requesting the Director's approval.
- F. The OSMRE Director will approve the AML grant distribution.
- G. OPAB will request a warrant from the Department of the Treasury for the approved amount.
- H. DRS will send the approved distribution package to OPAB and DFM. OPAB and DFM will coordinate implementation of the distribution in the budget and financial systems. The distribution will also be provided to RDs for use in their offices and by states and tribes. DFM will provide an electronic version of the approved distribution package for posting on the OSMRE website.

#### **4-110-60 Distribution of Appropriated Title IV Funds**

Congress may appropriate additional Title IV grant funds for state and tribal reclamation programs each year. OSMRE will distribute these funds as soon as practicable after the appropriation is received. DFA will develop distributions based on the requirements of the appropriations law. The Director will approve the distributions. DFA will provide the distribution to OPAB and DFM and the RDs. OPAB and DFM will coordinate implementation of the distribution in the budget and financial systems and will provide the distribution to the public.

## **CHAPTER 4-115 STATE EMERGENCY AML RECLAMATION PROGRAM**

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### **4-115-00 Purpose**

The purpose of this chapter is to define an Abandoned Mine Land (AML) emergency and discuss process, funding, and other considerations regarding AML emergencies.

### **4-115-10 AML Emergencies**

The Office of Surface Mining Reclamation and Enforcement (OSMRE), defines an AML emergency as a sudden danger or impairment related to coal mining that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal AML program operation procedures.

The objective of the emergency reclamation program is to stabilize the emergency aspects of the problem by eliminating the immediate danger to public health, safety, and welfare. Any remaining reclamation should then be accomplished as part of a regular non-emergency AML project.

### **4-115-20 Emergency declarations, ATPs, Finding of Fact**

States and Tribes determine when to request and emergency declaration from OSMRE according to their approved Reclamation Plan.

Upon receipt of a request for emergency declaration, OSMRE will review the information and ensure the project meets all requirements of the AML emergency program. If all information contained within the request for emergency declaration is complete, OSMRE will declare an emergency by signing a Finding of Fact and issuing

an ATP. The Finding of Fact certifies that the problem meets the emergency criteria and serves as the point of Federal action, authorizing the State/Tribe to proceed with reclamation work on the site. After the emergency is abated, the States and Tribes are required to comply with all applicable Federal laws and regulations, including NEPA and the Endangered Species Act. See OSMRE directive [REG-1 Handbook on the Procedures for Implementing the NEPA](#) for more information on NEPA in emergency situations.

If OSMRE determines that a request does not constitute an AML emergency, OSMRE must return a written determination within two working days. If the State or Tribe determines it to be an eligible high priority AML problem, OSMRE may assist the State or Tribe in submitting timely NEPA documentation. Special consideration should be given to those problems which do not currently meet the criteria for emergency declaration, but which may deteriorate into emergencies if not reclaimed promptly. As appropriate on a case-by-case basis, this assistance could include help with the documentation to enter the problem in e-AMLIS, preparation of the Environmental document, or other technical assistance as needed. Contact the servicing regional or field office to request assistance.

#### **4-115-30 Emergency Funding Information**

AML emergency projects are funded through an allocation or reallocation of an existing AML type financial assistance award. Emergency projects may be funded from either AML fee-based funding or BIL funding depending on fund availability. The BIL subaccount used for AML emergencies is “23. BIL Emergency Projects Costs.”

#### **4-115-40 Emergency Project Tracking**

To facilitate appropriate tracking, AML emergency projects must be entered into the Enhanced Abandoned Mine Land Inventory (e-AMLIS). See directive [AML-1 Abandoned Mine Land Inventory Manual](#) for information on entering AML emergencies into e-AMLIS.

#### **4-115-50 Resources**

Exhibits 1 through 5 of this chapter are resources that may benefit OSMRE, State, or Tribal personnel reviewing and investigating possible AML emergencies.

## Exhibit 1

### AML EMERGENCY PROGRAM GUIDELINES

#### 1. Emergency Criteria

As defined in 30 CFR 700.5 an emergency is a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures. For an AML problem to be declared an emergency the answers to the following three questions must be yes.

- a. Was there a sudden event?
- b. Is there a high probability of substantial physical harm to the health, safety, or general welfare of people?
- c. Does the emergency condition need to be abated in a time frame that is not possible under normal state/tribal program procedures in order to protect the health, safety, or general welfare of people?

#### 2. Proper Response to Declared Emergencies

The proper amount of emergency reclamation is the amount necessary to stabilize the emergency aspects of the problem by eliminating the immediate danger to public health, safety, and general welfare. Any remaining reclamation should then be accomplished as part of a regular, non-emergency AML project.

Emergency reclamation must be sufficient to stabilize conditions and eliminate the hazards until the remaining non-emergency reclamation can be undertaken. When non-emergency reclamation is needed after abatement of the emergency, the project should be classified as a high priority if the remaining reclamation needs to be done expeditiously. This action will help prevent deterioration of the emergency work already completed.

It is not appropriate to designate an emergency to pursue exploratory and design work for high priority projects which have the potential to deteriorate into an emergency situation. The design work should be done as part of the normal AML program.



### 3. Specific Guidance for Selected Types of AML Problems

- a. Surface Burning (SB). Surface Burning is an emergency when it threatens to burn occupied dwellings or when it is producing poisonous or dangerous gases, (e.g., carbon monoxide, hydrogen sulfide, etc.) and suddenly begins to threaten people. The presence of poisonous gases must be confirmed through the collection and laboratory analysis of ambient air samples or the use of a handheld monitor. Most refuse pile fires are characterized by noxious fumes, smoke, and open fires. While these conditions may be annoying, they do not normally constitute an emergency and should be considered under the regular AML grant program.

When non-emergency fires suddenly expand and threaten any inhabited structure(s) or poisonous gases suddenly begin to threaten people, emergency action will be considered to eliminate the threat.

Refuse fires are easier and cheaper to extinguish if discovered early. Therefore, notwithstanding the criteria for emergency definition discussed above, fires which are discovered at an early stage may be treated as emergencies.

- b. Gases/Underground Burning (GUB). Underground mine fires are considered emergencies when they threaten to burn occupied dwellings, either directly or by starting surface fires, or when they produce poisonous or dangerous gases (e.g. carbon monoxide, hydrogen sulfide, etc.). The presence of poisonous gases must be confirmed through the collection and laboratory analysis of ambient air samples or the use of a handheld monitor.

Normally, inventoried underground mine fires are not sudden occurrences and do not present an immediate danger to the public. The states/tribes will, generally, conduct abatement or control procedures through normal program operations.

However, emergencies may be declared when these fires suddenly break to the surface or where poisonous gases generated by the fire suddenly begin to threaten people.

As with Surface Burning, underground mine fires are easier and cheaper to extinguish if discovered early. Therefore, notwithstanding the criteria for emergency definition discussed above, fires which are discovered at an early stage may be treated as emergencies.

- c. Dangerous Slides (DS). Dangerous slides are emergencies when there is immediate danger to the occupants of dwellings which are, or could be, endangered by the slide. In some cases, a slide may be considered an emergency when it blocks a stream, threatening upstream or downstream flooding. Blockage of roadways and driveways may be considered an emergency if access for emergency vehicles is prevented, and no highway maintenance agency can act to clear the roadway.

Where these situations occur, emergency AML work will address only the emergency portion of the landslide. Permanent reclamation of the entire slide area may be considered when the emergency cannot be stabilized without it or it is clearly demonstrated that it is not cost effective to delay full reclamation.

Where emergency work abates the emergency but achieves less than permanent reclamation, the remaining work should be considered under the regular AML grant program.

- d. Portals (P) and Vertical Openings (VO). Vertical Openings are emergencies when there is a risk of falling into the opening. A portal can be an emergency when there is a substantial danger of entering the opening and being subjected to either fall material (e.g., roof rock or mine timbers) or an inhospitable mine atmosphere, such as methane and /or low oxygen conditions. The possibility of mine explosions from methane buildup would also create an emergency situation.

Historically, mine openings were often capped or sealed at the conclusion of mining with no provisions for continuous maintenance. Subsequent surface activities or vegetation may have covered or hidden these openings. The sudden uncovering of a previously unknown shaft or other mine opening in a populated area will generally be considered an emergency. Open shafts, although previously detected, which are now considered to be in or near populated areas may be treated as emergency work.

An opening which exposes persons to poisonous gases should be declared an emergency. The presence of poisonous gases should be confirmed when this can be done safely, and conditions allow meaningful sampling. This may be accomplished through the collection and laboratory analysis of ambient air samples or the use of a handheld monitor.

- e. Subsidence (S). Emergencies resulting from subsidence involve the danger of falling into the opening and/or the risk of damage to occupied dwellings, threatening the safety of occupants. Subsidence damage that significantly affects

the structural integrity of occupied dwellings or adversely affects gas or electric lines is usually an emergency. Subsidence beneath a roadway may be treated as an emergency only when a roadway maintenance agency cannot act to correct the problem.

- f. Other Problem Types. While the five problem types above represent those most commonly associated with emergencies, this Directive does not preclude other problem types from being declared an emergency. The problem must meet the emergency criteria as set forth in Section 1 of these guidelines and follow other guidance provided in this Directive.

## Exhibit 2

### COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

The Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR Part 800 established procedures to protect historic and archeological resources and implement Section 106 of the National Historic preservation Act (NHPA). NHPA requires a review of Federal emergency projects to determine the effect on historic properties.

Under the Federal Reclamation Program, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is responsible for all the activities set out below. Under state-managed emergency programs, the state is responsible, except that OSMRE decides when immediate action must be taken to protect the public and must document findings in the Finding of Fact.

This appendix sets out the steps to follow when emergency construction can be initiated within 30 days of OSMRE declaring the emergency. If construction cannot be initiated within 30 days of OSMRE declaring the emergency, the regular NHPA procedures must be followed. In no event will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed in order to meet NHPA requirements.

The first step in the review process is to determine whether any historic properties might be affected by the emergency project. Historic property includes any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NR). For the purpose of this directive, the term also includes artifacts, records and remains that are related to and located within such properties. The term "eligible for inclusion in the NR" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet NR listing criteria at 36 CFR 800.2(e).

While few emergency projects potentially affect historic properties, the following steps should be taken for each emergency project.

**1. If no historic properties are found that may be affected by the emergency abatement project** you will document this in the Finding of Fact for state/tribe managed emergency projects. You must send a copy of the documentation to the state Historical Preservation Officer (SHPO) or tribal leaders. No further steps in the Section 106 process are required.

Please note that, within the context of this appendix, the term SHPO includes tribal leaders if the project is on tribal lands and briefing paper includes the Finding of Fact for state/tribe projects.

2. **If a historic property is found that may be affected by the emergency abatement project**, whoever declares the emergency will contact the SHPO. In consultation with the SHPO, you will use the Criteria of Effect, pursuant to 36 CFR Part 800.9(a), to determine if the historic property will be affected. If all parties are satisfied that the historic property will not be affected this will be noted in the briefing paper. OSMRE/state will photograph the property. No further steps in the Section 106 process are required.

3. **If there are concerns that the emergency abatement may adversely affect a historic property**, all parties will make a reasonable attempt to resolve the concerns before work begins. If the concerns are resolved the briefing paper will:

(a) describe the historic property and explain how it will may be affected; and

(b) specify the concerns of the SHPO and explain how they were resolved.

After the abatement has been accomplished, any agreed upon information will be sent to the SHPO and a copy will be included with the emergency project's final report.

4. **If the SHPO has concerns which cannot be resolved and OSMRE determines that immediate action must be taken**, the briefing paper must include:

(a) a description of the SHPO's concerns;

(b) an explanation of why emergency abatement must be initiated immediately to prevent substantial physical harm to the health, safety, or general welfare of people; and

(c) a description of the emergency work to be done, its impact on the historic property(s), and the measures to be used to avoid or minimize harm to historic properties.

OSMRE/state will photograph the property and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare to people.

When the emergency has been stabilized, OSMRE/state will provide the SHPO with photographs, maps, and a description of the actual impact on the property. A copy of this information will be included with the emergency project's final report. If additional work is required to complete reclamation, the regular NHPA procedures must be followed.

**5. If it is not possible to contact the SHPO (for example, on a weekend) and OSMRE determines that immediate action must be taken.** Photograph the property, and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare of people. Note in the briefing paper that an unsuccessful effort was made to contact the SHPO and notify them at the first opportunity.

### **Guidelines for Photographs of Historic Properties**

It is recommended that the SHPO be contacted beforehand to determine what is required of photographs of historic properties. In lieu of specific guidance from the SHPO, the following guidelines should be followed.

Photograph Type: You may use digital photographs, or color or black and white film. Polaroid type photographs are not acceptable.

Buildings or structures:

Environment: Photograph should show the environment in which the property is located.

Exterior: Photographs must include views which show the entire length and/or width of the building or structure. These can be used to identify the style of the building and the type of construction.

Elements: Photographs should show the elements of the building or structure, such as wall and roofs that contain repeated features such as doors, windows and large decorative details.

Additional photographs should be taken of the individual features of the elements, such as porches, entryways and large significant decorative aspects. Machinery should be photographed.

Details of the Features: Close-up photographs of unusual windows, doors, and repeated designs and motifs should be taken. Also, include views of typical work methods and materials.

Historic and archeological sites: Photographs should document the condition of the site and present features. If relevant to the evaluation, photographs may also show artifacts that have been recovered from the site. Photographs must show the physical environment and land configuration of the site.

Identification: Identification of photographs should contain the following:

- The name of property/site.
- The location, including the State, county, city and address (if relevant).
- The emergency project name and number.
- The date of photograph.
- The role and negative number.
- Location where the negative is stored.
- A description of what the photograph is showing.

## Exhibit 3

### COMPLAINT INFORMATION GATHERING GUIDE

1. Was there a sudden event? When did it occur, if known?
2. Is there a high probability of substantial physical harm to the health, safety, or general welfare of people?
3. Does the problem have to be addressed immediately to protect health, safety, or general welfare of people?
4. How many people are endangered and to what extent?
5. How soon does the problem need to be addressed? (What is the urgency?)
6. What is the history of mining in the area?
7. If the mining operator is known, do they have continuing reclamation responsibility?
8. Are there any bonds associated with the disturbed area?
9. What is the source of the problem and where is it located?
10. How does the problem relate to past coal mining practices?
11. Is access to the property safe?
12. If needed, have the residents secured alternative housing within the commuting area?
13. Have photographs of all aspects of damaged property been taken (including inside of houses).
14. Is there a potential for any emergency abatement to impact the environment (NEPA), historic properties (NHPA), public utilities, private water supplies, or water waste disposal systems?
15. Does the current problem indicate a seasonal or other periodic (non-random) fluctuation that may change at a later date?
16. What can the landowner, mineral owner, and/or municipal agencies do?
17. What is the state's or tribe's regular AML program willing to do and when?
18. What is the local community willing to do and when?
19. What are the utility companies willing to do and when?
20. What are other state/tribal and Federal agencies willing to do and when?
21. Is an insurance company responsible?
22. Was the owner involved in or benefited from mining?
23. Are active mines operating in the area?



**Exhibit 4**

**AML COMPLAINT INVESTIGATION**

Type of Complaint: \_\_\_\_\_ Reported by: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date OSMRE Received Complaint: \_\_\_\_\_ Time: \_\_\_\_\_

Date OSMRE Field Office Received Complaint: \_\_\_\_\_ Time: \_\_\_\_\_

OSMRE Person Receiving Complain \_\_\_\_\_

Address of Complaint: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_

SITE INVESTIGATION

Date: \_\_\_\_\_ Time: \_\_\_\_\_ OSMRE Investigators: \_\_\_\_\_

State representative(s) Present: \_\_\_\_\_

Others Present: \_\_\_\_\_

Name of other agencies contacted (local, state or Federal): \_\_\_\_\_

LOCATION OF SITE

Directions to Location (Describe Route): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
USGS Quadrangle Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_  
\_\_\_\_\_

AREA MINED

Mined by: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Permitted Operation: No \_\_\_\_\_ Yes \_\_\_\_\_ Permit Number(s) \_\_\_\_\_

\_\_\_\_\_ Was the property owner involved in the mining? Yes

\_\_\_\_\_ No \_\_\_\_\_ If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Duration of Mining: From \_\_\_\_\_ Until \_\_\_\_\_

Type of Mining: \_\_\_\_\_

Field Elevation: \_\_\_\_\_ Coal Elevation: \_\_\_\_\_ Seam Name: \_\_\_\_\_

BOND (Optional)

Amount Received: \_\_\_\_\_ Date \_\_\_\_\_

Amount Returned: \_\_\_\_\_ Date \_\_\_\_\_

Amount Forfeited: \_\_\_\_\_ Date \_\_\_\_\_

Amount Available: \_\_\_\_\_ Date \_\_\_\_\_

PRESENT OWNERS

Surface Owners: Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mineral Owner's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

AFFECTED PARTIES

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Land Owner: \_\_\_\_\_ Adjacent Owner: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Land Owner: \_\_\_\_\_ Adjacent Owner: \_\_\_\_\_

SITE INFORMATION

Date problem began or was first noticed: \_\_\_\_\_

Are there any active mining or related activities in or around the area? No \_\_\_\_\_ Yes \_\_\_\_\_

Name of Operator(s) \_\_\_\_\_

Nature of Problem:	Source of Problem: Water
_____ Discharge	_____ Underground Mine
_____ Sedimentation	_____ Surface Mine
_____ Flooding	_____ Processing Area
_____ Air Pollution	_____ Refuse Pile
_____ Slide	_____ Treatment Facility
_____ Void, Shafts, Slope, Entries, etc.	_____ Other, Specify _____
_____ Mine Fire	_____
_____ Subsidence	_____
_____ Other, Specify _____	_____

Potentially Affecting:

_____ Persons . . . . .	Estimated Number _____
_____ Streams . . . . .	Name _____
_____ Public Road . .	Name _____
_____ Housing . . . . .	Number _____
_____ Building . . . . .	Number _____
_____ Schools . . . . .	Name _____
_____ Utility . . . . .	Power Line _____ Treatment Plant _____
	Sewer Line _____ Gas Line _____
	Water Line _____

\_\_\_\_\_ Historic or archeological site(s) Number \_\_\_\_\_

\_\_\_\_\_ Other, Specify \_\_\_\_\_

Estimate acres Affected \_\_\_\_\_

NATURE OF PROBLEM

Describe the problem (details: i.e., size shape; is problem spreading, expanding; first noticed, etc.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OTHER INFORMATION

Describe what other information is available and its location (i.e., maps, inspections, etc.):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ELIGIBILITY (Optional)

State legal officer Notification

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Method Used

Oral \_\_\_\_\_ Date \_\_\_\_\_ Written \_\_\_\_\_ Date \_\_\_\_\_

Declaration of Eligibility from state

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Method Used

Oral \_\_\_\_\_ Date \_\_\_\_\_ Written \_\_\_\_\_ Date \_\_\_\_\_

Eligible: Yes \_\_\_\_\_ No \_\_\_\_\_ Explain \_\_\_\_\_

POTENTIAL NEPA PROBLEMS

Note any potential National Environmental Policy Act Related problems. See REG-1, *Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA)*. Actual responsibility for complying with NEPA rests with the RD.

REMARKS

INVESTIGATOR: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

## **Exhibit 5**

# **NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM STORM WATER DISCHARGE PERMITS**

## **Background**

The 1987 amendment to the Clean Water Act required the United States Environmental Protection Agency (EPA) to regulate storm water discharges in the National Pollution Discharge Elimination System (NPDES). Final regulations for permit applications for storm water discharges were published on November 16, 1990. The NPDES regulates storm water discharges from municipal and industrial activities, including mining, inactive mines, and construction sites. Also, for those states and Indian lands where they are responsible for issuing Storm Water Discharge Permits, EPA published NPDES general permits in the September 9, 1992, Federal Register, 57 FR 41176.

States and Indian tribes may apply to EPA for approval to issue permits and administer their own pollution Discharge Elimination System. Most states have done so and are responsible for regulating storm water discharges with EPA providing guidance and oversight. However, in those states or Indian tribes that do not have the authority to issue permits, EPA remains the authorizing agency.

## **Storm Water Discharge Permits**

The agency responsible for abandoned mine land reclamation (OSMRE, state, tribe) must ensure that all applicable permits are obtained.

When obtaining a permit from EPA a Notice of Intent must be submitted two days prior to the commencement of construction and a storm water pollution plan must be developed and implemented. See 57 FR 41176 for detailed instructions.

Specifics for storm water discharge permits will vary by state or tribe. Check with your state agency or EPA representatives to determine the permit requirements for the proposed disturbance.

## **Emergencies**

Emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people must not be delayed by procedures for obtaining a storm water discharge permit. After the emergency is stabilized, if a storm water discharge permit is required, that permit must be obtained before any additional work is begun.

**CHAPTER 4-120**  
**ACID MINE DRAINAGE SET-ASIDE PROGRAM**

**Table of Contents**

4-120-00 Purpose

4-120-10 Policy

4-120-20 Eligibility

4-120-30 Allowable Funds for the AMD Set-Aside Account

4-120-40 Allowable Expenses from the AMD Set-Aside Account

**4-120-00 Purpose**

The purpose of this chapter is to explain procedures for recipients to establish, fund, and operate an acid mine drainage (AMD) set-aside account for AML fee-based programs. The set-aside program allows the recipient of an Abandoned Mine Land (AML) fee-based program grant from the Office of Surface Mining Reclamation and Enforcement (OSMRE) to deposit some AML funds into the AMD set-aside account to use the funds and interest for AMD problems.

**4-120-10 Policy**

The AMD abatement and treatment program is authorized in Section 402(g)(6) of the Surface Mining Control and Reclamation Act, as amended (SMCRA). It was first authorized in 1990. The 2006 SMCRA amendments increased the funding limits and removed a previous requirement for OSMRE to approve an AMD plan.

**4-120-20 Eligibility**

Recipients may establish an AMD set-aside fund for their AML fee-based grant if they are a state or tribe with an approved reclamation program which has not certified it has completed coal reclamation.

**4-120-30 Allowable Funds for the AMD Set-Aside Account**

- A. Each year recipients may keep and deposit the following funds into their AMD set-aside account:
  - 1. Up to thirty percent (30%) of the State or Tribal Share Funds distributed to a recipient this year. State or Tribal share funds (abbreviated in OSMRE's accounting system as SS) are authorized by section 402(g)(1) of SMCRA.
  - 2. Up to thirty percent (30%) of the historic coal funds distributed to a recipient this year. Historic Coal Funds (HC) are authorized in section 402(g)(5).
  - 3. Please refer to Chapter 4-500 for a full listing of available AML subaccounts and fund types.



- B. Recipients may not put Prior Balance Replacement Funds (HU) or Minimum Program Make-up Funds (FE) in an AMD set-aside account.
- C. Recipients should apply for the set-aside funds and OSMRE will award them as a separate subaccount within a recipient's annual AML program grant.

#### **4-120-40 Allowable Expenses from the AMD Set-Aside Account**

- A. Recipients must spend amounts from the fund, together with all interest earned, for the abatement of the causes and treatment of the effects of AMD in a comprehensive manner within a qualified hydrologic unit affected by coal mining practices.
- B. A "qualified hydrological unit" means a hydrologic unit which meets the following requirements:
  - 1. Water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources.
  - 2. The unit contains lands and waters that meet both the following requirements:
    - a. Eligible under section 404 of SMCRA and include any of the coal priorities described in section 403(a).
    - b. The subject of expenditure from the forfeiture of a bond under section 509 or from other State sources to abate and treat acid mine drainage.
- C. OSMRE considers all funds a recipient deposits in the set-aside account, plus interest earned, to be state or tribal funds.
- D. Recipients may use funds in the AMD set-aside account to meet another Federal grant program's matching requirement as long as the goals of the other program are comparable to set-aside program.

**CHAPTER 4-130**  
**AML SPECIAL FUTURE SET-ASIDE PROGRAM**

**Table of Contents**

4-130-00 Purpose

4-130-10 Policy

4-130-20 Funds in a Future Set-Aside Account

**4-130-00 Purpose**

The purpose of this chapter is to explain procedures for special Abandoned Mine Land (AML) future set-aside program funding awarded to a state or tribal recipient by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

**4-130-10 Policy**

The AML special or future set-aside program was authorized, then changed, and finally abolished by Congress in amendments to the Surface Mining Control and Reclamation Act (SMCRA). In 1987, Congress established the future set-aside program to allow states and tribes with approved AML programs to set aside AML funds to use for mine reclamation after the end of AML funding. The initial set-aside allowed recipients to spend the funds after August 3, 1992, for the purposes of Title IV. In 1990, Congress amended the program to allow recipients to spend the funds after September 30, 1995, for the coal priorities in section 403(a). In 2006, Congress abolished the future set-aside program.

**4-130-20 Funds in a Future Set-Aside Account**

- A. May not put any more AML Funds in a future set-aside account.
- B. OSMRE will consider all set-aside funds deposited in a recipient's set-aside account, plus any interest earned, as state or tribal funds.
- C. Recipients may spend funds in the set-aside account according to the terms in effect at the time the grant was awarded.
  - 1. Recipients must spend funds awarded under the 1987 set-aside, and related interest, for the purposes of Title IV of SMCRA.
  - 2. Recipients must spend funds awarded under the 1990 set-aside, and related interest, for any of the coal priorities in section 403(a) of SMCRA.
- D. Recipients can use funds in the set-aside account to meet a non-Federal funding match requirement for another Federal assistance program. However, the goals of the other program must meet the spending requirements for the AML set-aside program.

## CHAPTER 4-140 AML SUBSIDENCE INSURANCE PROGRAM

### **Table of Contents**

- 4-140-00 Purpose
- 4-140-10 Policy
- 4-140-20 Subsidence Insurance Program
- 4-140-30 Types of AML Funds
- 4-140-40 Subsidence Insurance Funding
- 4-140-50 Allowable and Unallowable Costs
- 4-140-60 Subsidence Insurance Premiums

### **4-140-00 Purpose**

The purpose of this chapter is to explain the rules governing the subsidence insurance program. As a state or tribe with an approved reclamation program, a recipient may receive subsidence insurance funding through their Abandoned Mine Land Fee-Based (AML) program grant from the Office of Surface Mining Reclamation and Enforcement (OSMRE).

### **4-140-10 Policy**

- A. Section 401(c)(1) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) authorizes recipients to operate a subsidence insurance program.
- B. OSMRE regulations at [30 CFR 887](#) governing the subsidence insurance program provide more information.

### **4-140-20 Subsidence Insurance Program**

Subsidence insurance programs insure private property against damages caused by land subsidence resulting from underground coal mining. Programs are administered by a recipient's state or tribe. They must be self-sustaining.

### **4-140-30 Types of AML Funds**

- A. If a recipient has certified that they have completed their coal reclamation priorities, they may use any AML funds for subsidence insurance.
- B. If a recipient is uncertified, they may only use state or tribal share funds for subsidence insurance funding. State/Tribal share is authorized in section 402(g)(1) of SMCRA and abbreviated as SS in OSMRE accounting system.
- C. Total cumulative subsidence insurance funding for each state or tribe must not exceed \$3,000,000. OSMRE may award funds up to this total in one single AML Fee-Based grant or in a series of grants.

- D. The appropriate regional or field office must ensure that these requirements are met when it awards a grant.
- E. Please refer to Chapter 4-500 for a full listing of available AML fund types.

#### **4-140-40 Subsidence Insurance Funding**

- A. OSMRE will award subsidence insurance funds as a subaccount within a recipient's annual AML Fee-Based grant.
- B. A recipient's application must include a statement in the program narrative describing how they will use the funds to achieve a self-sustaining, individual state or tribal administered program to insure private property against subsidence resulting from underground coal mining. It must also describe how the program is "state-administered" or "tribal-administered".
- C. The performance period of a subsidence insurance subaccount may be up to eight years.

#### **4-140-50 Allowable and Unallowable Costs**

- A. The following costs are allowable with subsidence insurance funds:
  - 1. Recipients may cover capitalization requirements and initial reserve requirements mandated by State law. However, a recipient must ensure that their expenditures are consistent with the OMB cost principles in [2 CFR Part 200 Subpart E](#).
  - 2. Recipients may pay administrative costs to establish and operate the subsidence insurance program.
- B. The following costs are unallowable with subsidence insurance funds:
  - 1. May not use AML funds for lands that are not eligible for AML funding under section 404 of SMCRA.
  - 2. Pay for subsidence damage caused by active mining.
  - 3. Must not pay for actual construction costs of housing or for damages to public property.

#### **4-140-60 Subsidence Insurance Premiums**

- A. Recipients must treat subsidence insurance premiums as program income. See Chapter

2-220 of this manual for guidance on using and reporting program income.

- B. Recipients must use all subsidence insurance premiums received to further the goals of the subsidence insurance program. OSMRE authorizes recipients to use program income to add to the program funding (the Addition option).

## CHAPTER 4-150 ENVIRONMENTAL COMPLIANCE

### **Table of Contents**

- 4-150-00 Purpose
- 4-150-10 Environmental Compliance Information
- 4-150-20 Environmental Compliance Applicability

### **4-150-00 Purpose**

The purpose of this chapter is to provide resources regarding environmental compliance.

### **4-150-10 Environmental Compliance Information**

All projects completed with federal AML funds must comply with local, State, and Federal environmental protection requirements. Normally an environmental review in compliance with the National Environmental Policy Act (NEPA) incorporates the requirements of other major federal laws related to the environment. For instruction on compliance with the National Environmental Policy Act, P.L. 91-190 (NEPA), refer to OSMRE policy directive [REG-1](#), *Handbook on Procedures for Implementing the National Environmental Policy Act*.

Projects funded entirely by FY 2024 AMLER payments or projects funded with a combination of FY 2024 AMLER payments and private monies do not require compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. Other environmental statutes that do not require a discretionary Federal action, such as the Endangered Species Act (ESA), will continue to apply. For ESA purposes, because there is no longer a Federal action that triggers the Federal consultation requirement under section 7, if a State, Tribe, or project applicant is unable to avoid take (to harass, hunt, shoot, capture, trap, kill, collect, wound, harm, or pursue an ESA-listed species, or attempt any of these activities), they must coordinate with the U.S. Fish and Wildlife Service (USFWS) for recommended avoidance or minimization measures. If take is still anticipated after incorporation of any measures from the USFWS, the State, Tribe, or project applicant must apply under section 10 of the ESA to obtain an incidental take permit. Any take that occurs in the absence of or that exceeds an incidental take permit would be a violation of section 9 of the ESA. Refer to the USFWS's website on Habitat Conservation Plans for additional information.

However, if a project is funded with FY 2024 AMLER payments and AML fee-based or BIL AML funds, NEPA will continue to apply, as will section 7 of the ESA and section 106 of the National Historic Preservation Act. If a project is funded with FY 2024 AMLER payments and Federal funds provided by another agency, please coordinate with the other agency to determine how to comply with the applicable environmental statutes.

After the authorization to proceed but before contract award each successful bidder for an AML contract must be evaluated for eligibility under [30 CFR 874.16](#). This review, usually completed by requesting an evaluation from the Applicant Violator System (AVS), ensures that the AML

Contractor does not own or control outstanding environmental violations from any state or federal coal regulatory program. The [AVS Program website](#) contains additional resources.

#### **4-150-20 Environmental Compliance Applicability**

These requirements apply to the Abandoned Mine Lands (AML) Reclamation program and any other reclamation or construction projects.

## CHAPTER 4-160 THE AUTHORIZATION TO PROCEED PROCESS

### **Table of Contents**

- 4-160-00 Purpose
- 4-160-10 Authorization to Proceed
- 4-160-20 ATP Approval Process

### **4-160-00 Purpose**

The purpose of this chapter is to explain how a state or tribe with an Abandoned Mine Land (AML) grant can get approval from the Office of Surface Mining Reclamation and Enforcement (OSMRE) to proceed with construction on a specific reclamation project.

### **4-160-10 Authorization to Proceed**

- A. Recipients must request and receive prior approval before they begin construction on an individual non-emergency coal and non-coal project. OSMRE calls this process in which a recipient requests and the awarding office approves individual projects, the Authorization to Proceed (ATP).
- B. OSMRE's ATP letter (Exhibit 1) notifies a recipient that the awarding office has determined that the environmental review is complete, and the problem area information is properly recorded in the enhanced Abandoned Mine Land Inventory System (e-AMLIS). The ATP is OSMRE's approval for a recipient to spend AML grant funds to reclaim or address this specific project. A recipient may proceed with project construction as soon as they receive the ATP.
- C. The ATP is the official "Point of Federal Action" for AML construction activities. Due to recipients not having to include information on individual AML projects in their grant application, OSMRE does not approve them in the grant award. After approval of an AML grant, a recipient must request the ATP for each project when they are ready.
- D. The ATP process also meets OMB requirements for an assistance application to identify specific project objectives, results, benefits expected, approach, and geographic location. Recipients normally fulfill this requirement when they send in environmental compliance documentation and when they enter site information into the funded category in e- AMLIS.
- E. Individual projects receiving Federal funds awarded to certified states and tribes (pursuant to [30 CFR Part 885.16](#)) and uncertified states and tribes (pursuant to [30 CFR Part 886.16](#)), must receive an ATP from OSMRE prior to the expenditure of construction funds. Individual projects include coal reclamation projects ([30 CFR Part 874](#)) and non-coal projects ([30 CFR Part 875](#)). ATPs for certified states and



tribes will be issued based on [30 CFR Part 875.15](#) and the prioritization matrix detailed in each state's/tribe's reclamation plan. All ATP documents must be kept in the official grant file.

#### **4-160-20 ATP Approval Process**

- A. Recipients must include the following information in a complete ATP request:
1. Confirmation that a recipient has entered the problem area information into e-AMLIS in compliance with directive [AML-1](#). Until the ATP is issued, problem features proposed for reclamation shall be entered in the unfunded category for the particular site.
  2. Environmental documents with compliance information for the National Environmental Policy Act (NEPA), Endangered Species Act, and other environmental requirements. See OSMRE REG-1, *Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA Handbook) (Revised 2019)* for a detailed description of the appropriate environmental compliance information and documents. This criterion is not fulfilled until OSMRE has signed a Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE).
  3. AML eligibility statement and basis for claiming AML eligibility.
  4. For AML enhancement projects, or Title IV projects less than 50% governmentally funded, the determinations document the recipient developed jointly with the Title V State regulatory authority. See Chapter 4-100-100 for more information.
- B. Although NEPA documentation is part of the criteria required for an ATP request, the NEPA process and the ATP process are two separate processes. Compliance with the Endangered Species Act is a third process in and of itself. Compliance with the Endangered Species Act under Section 7 needs to be complete prior to ATP issuance as well. An ATP request cannot be completed until OSMRE has issued a ROD, FONSI, or CE with the NEPA documentation. The ATP approval letter will reference the date that OSMRE signed the ROD, FONSI, or CE.
- C. OSMRE will process the ATP request within 14 working days after the signing of the ROD, FONSI, or CE, and send the recipient OSMRE's decision on the ATP request.

## Exhibit 1

### Authorization to Proceed

[State Agency]

[Address]

Dear [State AML Director]

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has determined that the [*name of project*] has met the following criteria:

1. The project has been entered into the Enhanced Abandoned Mine Land Inventory System (e-AMLIS) as [**problem area xxxxxx**] in compliance with Directive AML-1.
2. Environmental documents, including compliance information for the National Environmental Policy Act (NEPA) and other environmental requirements are documented with a [**Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE)**] on [Date of signed ROD, FONSI, or CE].
3. The ATP request included an AML eligibility statement and basis for claiming AML eligibility.
4. *(If project is an AML enhancement project or Title IC projects less than 50% governmentally funded) – The ATP request included a determination document that you developed jointly with the Title V State regulatory authority.*

Accordingly, pursuant to 30 CFR 886.16, you are authorized to proceed with this project and expend Federal funds in accordance with AML grant terms and conditions. If this project provides funding to a subrecipient through a subaward, the subrecipient must be approved by OSMRE separately from this ATP. OSMRE subrecipient approval can be requested either through the initial award application or through a separate request.

Sincerely

[Regional Director or Field Office Director]

**CHAPTER 4-200**  
**THE APPLICATION PROCESS FOR AN UN-CERTIFIED AML FEE-BASED, AMLER, OR BIL GRANT**

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4-200-10 AML Grant Overview  
4-200-20 AML Grant Application  
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4-200-40 Application Package

**4-200-00 Purpose**

The purpose of this chapter is to explain how a state or tribe with an approved Abandoned Mine Land (AML) program, that has not certified, can apply to the Office of Surface Mining Reclamation and Enforcement (OSMRE) for an AML grant. This chapter does not apply to states or tribes which have certified that they have addressed all known coal problems (see Chapter 4-300). This chapter also explains how an AML grant works.

**4-200-10 AML Grant Overview**

- A. Recipients must submit a separate grant applications for the AML fee-based, AMLER and BIL grants.
- B. Recipients may submit a single grant application each year for all AML Fee-Based activities. This combined annual grant is sometimes called “simplified” because it consolidates AML Fee-Based functions which are used to award as separate grants into a single grant award.
- C. The AML budget or cost categories which are combined are called subaccounts. AML subaccounts are costs which recipients must track separately, such as administrative costs and project costs for non-emergency coal reclamation. See Chapter 4-500 for a full listing of available AML subaccounts.
- D. The performance periods for all subaccounts included in an agreement normally start on the beginning date of the agreement. However, OSMRE may later add a new subaccount which starts on the date of the grant amendment which added it. For example, immediately after the annual fund distribution recipients may apply for an amendment to add current AMD set-aside funds to the previous year’s AML grant in order to deposit the set-aside funds sooner and earn additional interest.
- E. The grant performance period is determined by the subaccount with the longest designated period in the AML grant. The grant performance period is normally three to five years. However, within the grant performance period, recipients can only obligate funds for each subaccount within its specified performance period. The subaccount performance periods end on different dates.

1. All administrative cost subaccounts last for one year for AML fee-based and life of grant for BIL
  2. All project cost subaccounts except emergency project costs last for three to five years.
  3. Emergency project cost subaccounts normally last for one year.
  4. AMD set-aside subaccounts last until a recipient deposits the funds into their trust account.
  5. Subsidence insurance subaccounts last for eight years.
- F. When a subaccount ends before the end of the grant performance period, OSMRE normally closes the subaccount. If there are any unexpended funds, the awarding office will de-obligate them or transfer them to a different subaccount or grant as requested by the recipient.
- G. OSMRE tracks grant property through the administrative cost subaccount. When the awarding office closes the administrative subaccount, the transfer of AML property will be noted into the administrative cost subaccount of the subsequent AML grant or the recipient's disposition of the property.

#### **4-200-20 AML Grant Application**

- A. Applicants must submit a complete grant application by one of the following methods:
1. Enter the application in an OSMRE-approved electronic grants portal such as Grants.gov.
  2. Send a complete application with a signature by e-mail. The application forms must include the name and title of the authorized official who signed them and the date they were signed. Applicants must keep the original signed application in their files.
- B. OSMRE will notify an applicant that their application has been received.

#### **4-200-30 Application Submission**

- A. Applicants may apply at any time for a grant of any or all of the AML funds that are available to them.
- B. Send an application at least 60 days before the date the applicant wants the grant performance period to begin.

#### 4-200-40 Application Package

- A. OSMRE does not require detailed information on individual AML construction projects in the AML grant application.
- B. Applications must include the following items:
  - 1. Signed or approved Application for Federal Assistance, [Standard Form \(SF\) 424](#).
  - 2. Budget information. Applicants may use the optional [OSMRE 49](#) form or provide the information in an alternate format of their choice.
  - 3. Break out the funding they are requesting by subaccount. Please refer to Chapter 4-500 for a full listing of available AML subaccounts.
  - 4. The program narrative statement should include the following information:
    - a. Regulations at [2 CFR Part 200](#) require that the program narrative address the following criteria. However, information on specific reclamation projects is not required:

**Objectives and Need for Assistance.** Based on the approved AML state program, describe any relevant abandoned mine land problems (physical, economic, social, financial, or institutional) requiring a solution. Indicate the need for the assistance and state the primary and secondary objectives of the grant.

**Results and Benefits Expected.** Identify results and benefits to be derived from the reclamation program. For example, describe how the reclamation program will protect public health and safety, and improve the environment.

**Approach.** Outline a plan of action for the scope of the grant and describe how the proposed work will be accomplished. Cite factors (such as weather, eligibility issues, etc.) which might help or delay the work. Explain the reasons for taking this approach as opposed to others. Describe any unusual features of this grant, such as design or technological innovations, and reductions in cost or time. Identify the kinds of data to be collected and maintained. Discuss the criteria and methodology to be used to evaluate the results and success of the reclamation program.

**Geographic Location.** No information required.

- b. Applicants must include the following additional information in their application:

**Personnel.** Information as requested by Regional Grants staff.

**Fringe Benefits.** Show the basis and estimated total amount of fringe benefits.

**Travel.** Show how the travel expenses were calculated. Estimate the number of trips, their purpose, and average costs.

**Equipment.** List each item of equipment requested and explain why it is needed for the program. Estimate the total cost of equipment to be purchased, leased, or rented.

**Supplies.** Estimate the total cost for supplies and describe any major or unusual items.

**Contractual.** List proposed contracts with their purpose and estimated cost.

**Other.** List costs by type and explain how they are estimated.

**Indirect Costs.** Show how the indirect costs were calculated based on the indirect cost rate and base approved by the applicant's cognizant Federal agency.

5. Signed or approved Assurances for Construction Projects form [SF 424D](#).
6. If applicable, Disclosure of Lobbying Activities form [SF-LLL](#).
7. Please see AMLER (4-700) and BIL (4-650) Sections for additional grant specific information needed.

**CHAPTER 4-210**  
**APPLICATION REVIEW AND PROCESSING FOR AN UN-CERTIFIED AML FEE-BASED,**  
**AMLER, OR BIL GRANT**

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4-210-00 Purpose  
4-210-10 Application Review  
4-210-20 Grant Award Processing  
4-210-30 Award Actions Documentation

**4-210-00 Purpose**

The purpose of this chapter is to explain procedures used by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to receive and review Abandoned Mine Land Fee-Based (AML), AMLER, and BIL grant applications and to award a grant. These procedures apply only to grants for states and tribes which have not certified the completion of coal reclamation. If a state or tribe's program is certified, see the AML Fee-Based procedures in Chapter 4-300.

**4-210-10 Application Review**

The awarding office will process all complete AML grant applications within 60 calendar days of receipt of a complete and accepted application package.

The awarding office must take the following actions:

- A. Determine that the application is complete. See Chapter 4-200 for the requirements for a complete application.
- B. Determine that the proposed objectives and activities are appropriate for the program.
- C. Confirm availability of funds.
- D. Check the budget. Confirm that the proposed costs are allowable. Confirm that the budget uses AML fund types appropriately.
- E. Identify and resolve any questions or issues.
- F. Check the System for Award Management (SAM) to determine whether the applicant's organization or its officials are debarred, suspended, voluntarily excluded or ineligible for Federal assistance.
- G. Confirm that the applicant is in compliance with the single audit requirements found at [2 CFR Part 200 Subpart F](#).
- H. Assess the risks associated with awarding the applicant a grant.

#### **4-210-20 Grant Award Processing**

- A. Based on this review, the awarding office will decide whether to approve or disapprove an application. If the awarding office decides to approve it, they will award the AML grant. If they disapprove an application, the applicant will be notified.
- B. Before making the award, OSMRE will send information about the award to the Office of Communications for Congressional and public news release. The awarding office must follow the notification procedure established by the Office of Communications.
- C. OSMRE must process and approve the grant award through the current electronic grants system. OSMRE's accounting system will post the award into the grant payment system so that the funds will be available for the recipient to draw down.
- D. The recipient will receive the approved award document by e-mail or will receive notice from the current electronic grants system.

#### **4-210-30 Award Actions Documentation**

OSMRE will document the application reviews and all programmatic and financial findings and recommendations in the official grant file kept in the awarding office. The following list of required documentation is only a minimum. Awarding offices must include any additional supporting information which would help an outside reviewer to understand the application review process and award decision for a particular grant.

- A. An applicant's application as was originally received, all subsequent revisions, and any other information sent from the applicant/recipient.
- B. Records of all meetings or telephone conversations with an organization which provided information about the application.
- C. All correspondence about the application or the award decision.
- D. All internal reviews of the application or parts of the application. OSMRE will use a checklist to document application completeness.
- E. All explanations or resolutions of questions rose during the review process.
- F. All records or explanations of the timing of the award process, especially any time period when the awarding office could not process the award because it was waiting for actions outside its control, such as an applicant's responses to questions.



**CHAPTER 4-220**  
**AMENDMENTS AND POST-AWARD CHANGES FOR AN UN-CERTIFIED AML FEE-BASED,**  
**AMLER, or BIL GRANT**

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4-220-30 Formal Amendments  
4-220-40 Amendment Process  
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4-220-60 Does Not Require Prior Approval

**4-220-00 Purpose**

The purpose of this chapter is to explain policy and procedures used by the Office of Surface Mining Reclamation and Enforcement (OSMRE) for Abandoned Mine Land (AML) grant amendments. It explains which changes to grants require prior approval, either in a formal grant amendment or in a letter. This information applies to all AML Fee-Based, AMLER, BIL grants and cooperative agreements if a state or tribe has not certified that they have completed coal reclamation. If an AML program is certified, see Chapter 4-300 for guidance on AML Fee-Based amendments.

**4-220-10 Policy**

Requirements for changing the terms of a grant come from the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR 200 Subpart D](#).

**4-220-20 Change Requests**

- A. If a change requires prior written approval, recipients must apply for and receive OSMRE's approval before the change is implemented or any funds are obligated. If a recipient incurs any costs before the change is approved, then the costs may not be allowed.
- B. The awarding office will not approve any request for a change to an agreement (including a time extension, funding increase, or changes in the subaccounts) which is received after the scheduled end of the performance period. OSMRE will only make an exception if there are unforeseen circumstances not under the recipient's direct control and if the recipient justifies these extenuating circumstances to the satisfaction of the authorized official in the awarding office.
- C. OSMRE should receive requests to extend the performance period of a grant at least 30 days before the date it is scheduled to end. Normally, OSMRE will approve only one

extension of the performance period and will not extend the time for more than one year. Exceptions may be made if the recipient justifies the special or unusual circumstances that the awarding office finds satisfactory.

#### **4-220-30 Formal Amendments**

OSMRE must approve the following changes to an AML grant in a formal amendment document:

- A. Extend the performance period.
- B. Add more funds to the grant.
- C. De-obligate unspent funds.
- D. Add a new subaccount to the grant.
- E. Transfer funds from one subaccount to another.

#### **4-220-40 Amendment Process**

- A. Either party may initiate a grant amendment. However, OSMRE and the recipient must both agree on the amendment terms.
- B. Recipients should make multiple changes by a single amendment whenever possible.
- C. Recipients must submit an amendment application to the current electronic grants system or, if unable to access the electronic system, by e-mail. The amendment application must include the following:
  - 1. Signed or approved Form [SF-424](#), identifying the type of change the recipient is requesting in item 8.
  - 2. A narrative explanation and justification for the requested change. Recipients may use the optional [OSMRE 51](#) form, transmittal letter, or any other format.
  - 3. If the request will change the budget or the subaccounts, provide revised budget information. Recipients may use the optional [OSMRE 49](#) form or any alternative format showing the proposed subaccounts and amounts.
- D. OSMRE will process AML amendments using the same steps as new grants that are outlined in Chapter 4-210. However, the awarding office will approve or disapprove the complete amendment request within 30 days of receiving it.
- E. The amendment takes effect when the authorized official in the awarding office approves it in the current electronic grant system. The amendment applies to the entire grant

performance period unless otherwise stated. The approved amendment becomes part of the original agreement.

- F. Amendments closing out the administrative subaccount of an AML grant also require submittal of all required closeout reports, including financial and performance reports and property inventories. See Chapter 4-230 for information on financial and performance reports, and Chapter 4-240 for information on closing out an AML subaccount.
- G. The awarding office will notify the recipient when the amendment has been approved and will send any appropriate documentation.

#### **4-220-50 Prior Approval**

Recipients are required to get prior written approval for some changes which do not require formal grant amendments. Recipients must request these changes and OSMRE will approve them by e-mail. The following changes require written approval:

- A. OMB Cost principles found in [2 CFR Part 200 Subpart E](#), state that some cost items are allowable only if a recipient has OSMRE prior approval.
- B. Significant changes in the scope of the program may require written approval. For example, sub granting major activities of a program to another entity would require OSMRE approval. However, changes such as reorganizations or new administrative systems would not require approval.

#### **4-220-60 Does Not Require Prior Approval**

- A. Recipients may make all other changes without approval. However, recipients must notify OSMRE of the change.
- B. Changes to a specific AML construction project, which fits the broad scope or objectives of an AML project costs, subaccount unless the recipient needs additional funding for the subaccount. However, a recipient may need to revise and resubmit the environmental compliance (NEPA) and Authorization to Proceed (ATP) documents for the project. See Chapter 4-160 for the ATP process and OSMRE REG-1, *Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA Handbook)* (Revised 2019) for more information on the NEPA process.

**CHAPTER 4-230**  
**PERFORMANCE AND FINANCIAL REPORTING FOR AN UN-CERTIFIED AML, AMLER, OR**  
**BIL GRANT**

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4-230-10 Policy  
4-230-20 Reporting Requirements  
4-230-30 Alternatives to the Reporting Requirements  
4-230-40 Report Monitoring

**4-230-00 Purpose**

The purpose of this chapter is to explain the reports required from a state or tribe that received an Abandoned Mine Land (AML Fee-Based, AMLER, BIL) grant from the Office of Surface Mining Reclamation and Enforcement (OSMRE). It describes when reports are due, how to submit them, and what information to include in the reports. This information applies to a state or tribal reclamation program that has not certified that it has completed coal reclamation. If the program is certified, see Chapter 4-300 for information on AML Fee-Based reporting requirements.

**4-230-10 Policy**

The requirements for submission of recipient performance and financial reports are established in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).

**4-230-20 Reporting Requirements**

Recipients must submit programmatic and financial reports annually. These reports are due 90 days after the end of each 12-month reporting period.

- A. First annual report will normally be a final report for the subaccounts within the grant that last one year, such as administrative costs. The reporting period starts on the effective date of the grant and ends on the last day of the performance period of the closing subaccounts.
- B. Second annual report will normally be an interim report. Recipients should refer to the NOA for report deadlines.
- C. If the grant performance period is extended beyond three years, recipients must complete an annual interim report for each 12-month period.
- D. The final report for the grant has a report period ending on the last day of the performance period. Further guidance on AML close out reports are in Chapter 4-240.

If a recipient cannot meet a due date on a required report, contact the awarding office. They may extend the report due date if the recipient has an adequate justification, and the report is not yet overdue.

- A. Recipients may submit reports to the current electronic grants system, such as GrantSolutions.
- B. Recipients may also submit reports by e-mail, if unable to upload them to the electronic system. If a recipient sends their reports by e-mail, the forms must include the name and title of the authorized official who signed them, the date signed, and the recipient must maintain the original signed forms in their files.
- C. Financial Report.
  - 1. Complete the [SF-425](#), Federal Financial Report, and [SF-425A](#) attachment form.
  - 2. May complete the optional [OSMRE 49](#) Budget Information and Financial Reporting Form.
  - 3. The report must break out the expenditures by subaccount and by fund type. If the report method or form used does not provide this level of detail, the recipient must attach a document which breaks out the reported costs.
- D. Narrative Performance Report.
  - 1. May use the optional [OSMRE 51](#) form, a blank page, or any narrative format for the performance report.
  - 2. The report must list all reclamation sites worked on during the performance period. At a minimum, the report must include the following information for each site: the site name, problem area identification number, start date, completion date if completed, keyword accomplishments, and costs to date.
  - 3. If a recipient's completed problem area is in the OSMRE Enhanced Abandoned Mine Land Inventory System (e-AMLIS), then they do not need to duplicate it in the performance report, but they must include the appropriate e-AMLIS key for the completed problem area.
  - 4. Please see AMLER (4-700) and BIL (4-650) Sections for additional grant specific information needed.

#### **4-230-30 Alternatives to the Reporting Requirements**

After receiving OSMRE approval, a recipient may submit grant performance and financial report information in an alternative format or timeframe. This gives recipients flexibility in providing grant performance data in a manner that is more efficient and effective while still meeting the grant

performance data needs. The awarding office will be as flexible as possible in approving alternative grant performance reporting schedules or formats. Please contact the awarding office to work out an alternative reporting plan that is acceptable to both parties. However, if OSMRE has not approved an alternative reporting plan, recipients must comply with the performance and financial reporting requirements outlined above.

#### **4-230-40 Report Monitoring**

- A. OSMRE will review a recipient's programmatic and financial reports. The awarding office will verify and determine if a recipient has complied with the reporting requirements and provided all the information needed. The following list is a minimum review:
  - 1. An official authorized to act for the recipient's organization must sign or approve the reports. Reports received by e-mail must include the name and title of the authorized official who signed the original forms and the date signed.
  - 2. OSMRE must receive reports by the due dates.
  - 3. All reported activities and claimed costs must be in compliance with the approved state plan and Federal regulations.
  - 4. Programmatic reports must compare the planned and actual accomplishments of AML program activities.
  - 5. Financial reports must be mathematically accurate and is consistent with OSMRE's drawdown records.
  - 6. All claimed costs must be supported by a recipient's accounting records and they must be able to reconcile them.
- B. If any concerns are identified, the awarding office will work with the recipient to correct the report.
- C. The awarding office will prepare a monitoring statement to document the review.

**CHAPTER 4-240**  
**CLOSING AN UN-CERTIFIED AML, AMLER or BIL GRANT**

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4-240-30 Closeout Package  
4-240-40 Required Documents for Closeout  
4-240-50 Closeout of an AML Subaccount  
4-240-60 Closeout Package Review

**4-240-00 Purpose**

The purpose of this chapter is to describe what must be done to close the Abandoned Mine Land (AML), AMLER, or BIL grant received from the Office of Surface Mining Reclamation and Enforcement (OSMRE). It also describes how to close a completed AML subaccount. This chapter applies if a state or tribal reclamation program has not certified that it has completed coal reclamation. If a state or tribe is certified, see Chapter 4-300 for AML Fee-Based grant closeout information.

**4-240-10 Policy**

The requirements for closeout procedures come from the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).

**4-240-20 Closeout**

- A. OSMRE will normally close out an AML grant 240 days after the end of the grant performance period. The first 120 days allows the recipient to submit their reports. The remaining 120 days allows the awarding office to complete the closeout process.
- B. The awarding office will normally close out individual AML subaccounts when they end before the end of the grant performance period. The subaccount will be closed no later than 240 calendar days after it ends.
- C. AML grants may be closed without an audit. However, OSMRE may take additional administration action after closeout if a subsequent audit identifies findings or questioned costs.
- D. The awarding office will not close a grant until all allowable costs have been paid and all unexpended funds have been de-obligated.
- E. If a grant is in litigation or under appeal, then the awarding office will not close the grant.

- F. If OSMRE terminates a grant, the awarding office will not close it until all termination actions have been completed.

#### **4-240-30 Closeout Package**

- A. A complete closeout package is due to 120 days after the end of the grant performance period.
- B. If a recipient has made every reasonable effort to submit a complete closeout package within 120 days but cannot meet the due date, they may request an extension. The recipient must send a written request to extend the due date with a justification explaining why they need the extension. OSMRE will notify the recipient of the approval along with any interim steps that may be required.
- C. Recipients may send reports with original signatures by e-mail, if they are unable to submit them to the electronic grants system. The forms must include the name and title of the authorized official who signed them, the date signed, and the recipient must maintain the original signed forms in their files.

#### **4-240-40 Required Documents for Closeout**

A complete closeout package for an AML grant includes the following documents:

- B. Final financial report. See Chapter 4-230 for information on how to prepare and submit a financial report.
  - 1. Must report all program income in accordance with the deduction option and applying program income to the recipient's expenditures to reduce Federal costs. See Chapter 2-220 for more information on program income.
  - 2. There cannot be any unliquidated obligations on the final report. All obligations must be paid prior to close out.
- C. Final performance report. See Chapter 4-230 for information about the narrative performance report.
- D. Report of Government Property if the recipient acquired or held property under this grant. Report their property inventory on the Tangible Personal Property Report ([SF-428](#)) that allows for any other inventory format acceptable to the awarding office.
  - 1. The inventory must list all equipment or real property acquired under this grant or transferred into this grant from previous AML grants. Recipients must notify the awarding office whether they transferred the property to the subsequent AML grant or disposed of the property.



2. Normally, recipients will hold property in an Administrative Costs subaccount and report the property inventory when OSMRE closes that subaccount rather than at final grant closeout.
- E. Report of Federally Owned Property, if any. Recipients must list all Federally owned property provided to them separately from grant-purchased property. To report use the Tangible Personal Property Report ([SF-428](#)) that allows for any other acceptable property list. Recipients must request that the property be transferred to the subsequent grant or properly disposed.
- F. Update the Enhanced Abandoned Mine Land Inventory System (e-AMLIS), if necessary. Recipients should enter completion data on each problem area when they complete it, but they must ensure that all completion data under this grant has been entered in e-AMLIS before the closeout package is submitted. There must be a statement stating the completion of this step.
- G. Please see AMLER (4-700) and BIL (4-650) Sections for additional grant specific information needed.

#### **4-240-50 Closeout of an AML Subaccount**

OSMRE will use the following process to close out AML subaccounts which end before the end of the grant performance period:

- A. Recipients must send the closeout documents listed above for the subaccounts which have ended. They must send the closeout package to the awarding office within 120 days after the end of the subaccount performance period.
- B. Within 60 days of receipt, the awarding office must review the package and complete all actions necessary to close the subaccount. The awarding office will notify the recipient of the completed the actions and send the appropriate documents.
- C. If a recipient has any unexpended funds in the subaccount, the awarding office must process an amendment to de-obligate the funds or transfer them to another subaccount within the same grant. See Chapter 4-220 for amendment processes.
- D. Please refer to Chapter 4-500 for a full listing of available AML subaccounts.

#### **4-240-60 Closeout Package Review**

The awarding office will review the closeout package and determine if it is complete and acceptable. If the package is not acceptable, the awarding office may return it to the recipient with an explanation of what must be done to complete or correct it, ask for additional information, or take

other actions to resolve the problems. After OSMRE receives an acceptable closeout package, the awarding office must complete the following actions within 60 days:

- A. Review the closeout package and the grant.
  - 1. Verify that OSMRE has added all known changes to the grant by appropriate revisions or grant amendments.
  - 2. Resolve any grant suspensions, withholding of funds, disputes, and violations of grant terms and assurances.
  - 3. Write a brief evaluation of the recipient's performance under the grant and keep it in the official grant file.
  - 4. Reconcile the inventory of Federally owned property with the awarding office's records and approve the transfer to a subsequent agreement.
  - 5. Verify that the agreement and the file are complete. The awarding office will use a checklist to document this step.
- B. Process the final grant action to de-obligate any unexpended funds. See Chapter 4-100 for information on what will happen with the de-obligated funds.
- C. Recipients will receive notice that the grant is closed. Please see Chapter 2-270 of this manual for record retention and access requirements.

**CHAPTER 4-300**  
**TITLE IV GRANT PROCEDURES FOR CERTIFIED AML FEE-BASED GRANTS**

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**4-300-00 Purpose**

The purpose of this chapter is to explain the procedures used by the Office of Surface Mining Reclamation and Enforcement (OSMRE) for grants to certified states and tribes under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). These procedures apply to a state or tribe's reclamation program if they have certified that they have achieved all the priorities in section 403(a) of SMCRA for coal reclamation on eligible lands and waters in their jurisdiction. This chapter only applies to Certified AML Fee-Based grants.

**4-300-10 Policy**

- A. Recipients must use funds for activities authorized in SMCRA and described in their approved reclamation plan or their grant application.
- B. Recipients must comply with all applicable Federal laws and regulations. This includes Department of Interior, Office of Management and Budget (OMB) and Treasury regulations, including the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at 2 CFR Part 200 Subpart D.
- C. 2 CFR 1402, *Financial Assistance Interior Regulation, Supplementing the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*.

**4-300-20 Title IV Grant Application**

- A. Applicants may submit their application to the current electronic grants system or may e-mail their application to the appropriate OSMRE awarding office.
- B. An applicant may apply at any time for a grant of any or all of the program funds that are available to them.

- C. The application must include the following items:
1. [SF-424](#) signed by an authorized official.
  2. A budget breakout showing the requested funding by OSMRE subaccount categories. Please refer to Chapter 4-500 for a full listing of available AML subaccounts.
  3. A program narrative statement very briefly describing the planned activities. The application is not required to include information on individual projects or activities. The narrative must include a statement that activities to be supported with Prior Balance Replacement Funds are for purposes established by the state legislature or tribal governing body. The narrative must discuss how priority was given to addressing the impacts of minerals development for these activities.
  4. [SF-424D](#), Assurances for Construction Programs.
  5. [Certifications](#) form showing compliance with Debarment and Suspension, Drug-Free Workplace, and Lobbying statutes.
  6. If applicable, Disclosure of Lobbying Activities form [SF-LLL](#).
- D. The application must provide the information OSMRE needs to award the grant. If the application is not complete, the awarding office will inform the applicant as soon as practicable of the additional information needed to process the award.

#### **4-300-30 Grant Award**

- A. The awarding office will award the grant as soon as practicable, but no more than 30 days after receipt of a complete application. OSMRE will complete the following actions:
1. Determine that the application is complete.
  2. Confirm that the amount of funds requested is available.
  3. Check the System for Award Management (SAM) to confirm that the applicant's organization or its officials are not debarred, suspended, or ineligible for Federal assistance.
  4. Confirm that the applicant is in compliance with OMB's single audit requirements.
  5. Assess the applicant's risk to receive grant funds.
  6. Announce the award to Congress and the public using the notification procedures established by OSMRE's Office of Communication.

7. Approve the award through the current electronic grants system.
  8. Send the approved award to the recipient.
  9. Document the award in an official grant file. The file must include the application and all other materials submitted, all findings and determinations, and all other information needed to understand the application and award process.
- B. The award will cover the performance period the recipient requested in their application. If any subaccounts have different performance periods than the grant period, the performance periods must be specified in the application or the award.
- C. The award, once approved, obligates the Federal funds. A recipient accepts the award and its conditions when they start work under the agreement or when they first draw down the funds.

#### **4-300-40 Environmental Compliance Requirements**

- A. When a recipient conducts a coal reclamation project to comply with certification requirements under 30 CFR 875.14(b), they must implement the environmental compliance procedures found in OSMRE REG-1, *Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA Handbook) (Revised 2019)*. Recipients must not expend any funds on a coal reclamation project until OSMRE has ensured that all necessary actions have been taken to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits or requirements, and the awarding office issues an Authorization to Proceed (ATP).
1. A complete ATP request must confirm that the recipient has entered the problem area information into the Enhanced Abandoned Mine Land Inventory System (e- AMLIS) in compliance with directive [AML-1](#).
  2. The ATP request must also include the appropriate NEPA compliance information. See the [NEPA Handbook](#) for a detailed description of the information and documentation.
  3. Although NEPA documentation is part of the criteria required for an ATP request, the NEPA process and the ATP process are two separate processes. An ATP request cannot be completed until OSMRE has issued a Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE) with the NEPA documentation. The ATP approval letter will reference the date that OSMRE signed the ROD, FONSI, or CE (see Chapter 4-170 for information on the ATP process).

- B. Recipients are responsible to ensure that all applicable laws, clearances, permits, or requirements are met before they expend Title IV funds.
- C. Projects or activities other than coal reclamation under 30 CFR Part 874 may not require an ATP from OSMRE. The NEPA requirements in the [NEPA Handbook](#) may apply to those projects or activities where it is not required to issue an ATP. Therefore, please consult with OSMRE's NEPA staff to determine specific requirements.

#### **4-300-50 Grant Amendments**

- A. When a recipient wishes to make any changes to their assistance agreement, they must follow the requirements in [2 CFR Part 200](#).
- B. OSMRE will not approve a request for a change, including a no-cost extension, if the request is received after the end of the performance period unless there are unforeseen circumstances not under the recipient's direct control. Recipients must justify these extenuating circumstances to the satisfaction of the authorized official in the awarding office.
- C. The following changes to a grant agreement must be approved with a formal grant amendment:
  - 1. Add more funds to the agreement.
  - 2. De-obligate funds before the end of the grant performance period.
  - 3. Make the grant performance period longer or shorter.
  - 4. Transfer funds from one subaccount to another.
  - 5. Add a new subaccount.
- D. Recipients may enter an amendment application to the current approved electronic grant system. Alternatively, they may send an e-mail which must include a signed Form [SF-424](#) and a brief explanation of the requested change. If the amendment will revise the budget, they must also include a revised breakout of the grant budget by subaccount.
- E. OSMRE will process amendments in accordance with the provisions for awarding new agreements in section 4-300-30 above.

#### **4-300-60 Reporting Requirements**

- A. Recipients must provide performance and financial reports to OSMRE annually. Reports are due 90 days after the end of each 12-month period of the grant

performance period, starting on the effective date of the grant. Alternatively, they may provide reports on another annual cycle mutually acceptable by both parties.

1. The financial report must be on a [SF-425](#) reporting form.
  2. The narrative performance report may be filed electronically in any format. The report must describe the accomplishments under the grant during this reporting period.
- B. When an OSMRE office receives grant financial and performance reports, it must review the reports and document that the reports comply with all requirements. The awarding office will prepare a monitoring statement to document the review.
- C. Recipients must annually update Enhanced Abandoned Mine Land Inventory System (e-AMLIS) for each reclamation project as it is completed. If they add any coal problems to e-AMLIS in a new or existing problem area, OSMRE must approve the amendment to the inventory before the recipient expends Title IV funds.

#### **4-300-70 Title IV Closeout**

- A. Upon completion of each grant, recipients must submit a final financial report and a final performance report. Recipients must make every reasonable effort to send the reports no later than 120 calendar days after the end of the grant. OSMRE may extend the due date for the final reports at the recipient's request.
- B. The receiving OSMRE office must perform the following actions to close out the grant:
1. Review the closeout information provided.
  2. De-obligate any unexpended grant funds.
- C. All Title IV grant funds are available until expended. If OSMRE de-obligates any unexpended funds before the grant, then those funds will be available for re-award. Recipients may apply for unused funds whenever they choose, either in a new grant or as an amendment to an existing open grant.

## CHAPTER 4-400 PROCEDURES FOR CIVIL PENALTY GRANTS

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- 4-400-10 Policy
- 4-400-20 Civil Penalty Application
- 4-400-30 Civil Penalty Award
- 4-400-40 Environmental Compliance Requirements
- 4-400-50 Civil Penalty Amendments
- 4-400-60 Reporting Requirements
- 4-400-70 Civil Penalty Closeout

### **4-400-00 Purpose**

The purpose of this chapter is to explain the procedures the Office of Surface Mining Reclamation and Enforcement (OSMRE) use civil penalty reclamation under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). These procedures apply to a program if a recipient has received funding for a civil penalty project in their state or tribe previously as defined in section 402(g) of SMCRA for coal reclamation on eligible lands and waters in their jurisdiction.

### **4-400-10 Policy**

- A. Recipients must use funds for activities authorized in SMCRA and described in their approved reclamation plan or their grant application. If recipients have a qualifying project under Section 402(g)(4) of SMCRA, they may submit a request for funds. It is up to OSMRE's discretion to provide funding based on amounts collected from the assessment of civil penalties under Section 518 of SMCRA.
- B. Recipients must comply with all applicable federal laws and regulations. This includes OMB and Treasury regulations such as the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, found at [2 CFR Part 200](#).
- C. Some cost items in OMB's Cost Principles require the prior approval of the awarding agency in order to be allowable costs, including equipment and capital expenditure costs.

### **4-400-20 Civil Penalty Application**

- A. Applicants may submit their application to the current electronic grants system or e-mail their application to the appropriate OSMRE awarding office.
- B. An applicant may apply at any time for a grant of any or all of the program funds that are available to them.



- C. The application must include the following items:
1. [SF-424](#) signed by an authorized official.
  2. A budget narrative explaining and justifying the requested budget.
  3. A program narrative statement must explain the proposed project. Applicants may use the optional [OSMRE 51](#) form or plain paper.
    - a. Explain the need for the project.
    - b. Provide a summary of the project. Who will be responsible for the contract and oversight?
    - c. What are the purpose, goals, and objectives of the project?
    - d. Does the applicant have the legal right of entry to the property for construction and continuing monitoring and maintenance? Provide a copy of the authorizing document.
  4. [SF-424D](#), Assurances for Construction Programs.
  5. If applicable, Disclosure of Lobbying Activities form [SF-LLL](#).
- D. The application must provide the information that OSMRE needs to award the grant. If the application is not complete, the awarding office will inform the applicant as soon as practicable of the additional information needed to process the award and work together to obtain the required documents.

#### **4-400-30 Civil Penalty Award**

- A. OSMRE will award a grant to the recipient as soon as funding becomes available. The awarding office will complete the following actions:
1. Determine that the application is complete.
  2. Confirm that the amount of funds requested is available.
  3. Check the System for Award Management to confirm that the recipient's organization or its officials are not debarred, suspended, or excluded for purposes of receiving funding.
  4. Confirm that they are in compliance with OMB's single audit requirements.
  5. Assess the applicant's risk to receive grant funds.

6. Before the planned award, OSMRE will send information about the award to the Office of Communications for Congressional and public news release. The awarding office must follow the notification procedure established by the Office of Communications.
  7. Approve the award through the electronic grants system.
  8. Send the approved award to the recipient.
  9. Document the award in an official grant file. The file must include their application and all other materials submitted, all the findings and determinations, and all other information needed to understand the application and award process.
- B. The award will cover the performance period requested in the application.
- C. The award, once approved, obligates the federal funds. A recipient accepts the award and its conditions when they start work under the agreement or when they first draw down the funds.

#### **4-400-40 Environmental Compliance Requirements**

- A. When a recipient conducts a coal reclamation project using civil penalty funds, they must comply with the requirements in OSMRE REG-1, *Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA Handbook) (Revised 2019)*. Once the NEPA process is completed, they must request an Authorization to Proceed (ATP). Recipients must not expend any funds on a coal reclamation project until OSMRE has ensured that all necessary actions have been taken to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits or requirements, and the ATP is issued.
1. Although NEPA documentation is part of the criteria required for an ATP request, the NEPA process and the ATP process are two separate processes. An ATP request cannot be completed until OSMRE has issued a Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE) with the NEPA documentation. The ATP approval letter will reference the date that OSMRE signed the ROD, FONSI, or CE (see Chapter 4-170 for information on the ATP process).
- B. The recipient is responsible to ensure that all applicable laws, clearances, permits, or requirements are met before they expend Civil Penalty funds.
- C. Projects or activities other than coal reclamation under [30 CFR Part 874](#) may not require an ATP. The NEPA requirements in the [NEPA Handbook](#) may apply to those projects or activities. Therefore, please consult with OSMRE's NEPA staff to determine specific

requirements.

#### **4-400-50 Civil Penalty Amendments**

- A. When a recipient wishes to make any changes to their assistance agreement, they must follow the requirements in [2 CFR Part 200](#).
- B. OSMRE will not approve a request for a change, including a no-cost extension, if the request is received after the end of the performance period unless there are unforeseen circumstances not under the recipient's direct control. Recipients must justify these extenuating circumstances to the satisfaction of the authorized official in the awarding office.
- C. OSMRE must approve the following changes to a grant agreement with a formal amendment:
  - 1. Add more funds to the agreement.
  - 2. De-obligate funds.
  - 3. Make the grant performance period longer or shorter.
- D. Either party may initiate a grant amendment. However, the recipient and OSMRE must both agree on the amendment terms. Recipients must submit an amendment application to the current electronic grants system or by e-mail. The amendment application must include the following:
  - 1. Signed or approved Form [SF-424](#), identifying the type of change that is being requested in item 8.
  - 2. A narrative explanation and justification for the requested change. Recipients may use the optional [OSMRE 51](#) form, transmittal letter, or any other format.
  - 3. If the request will change the budget or the subaccounts, the recipient must provide revised budget information. Recipients may use the optional OSMRE 49 form or any alternative format showing the proposed subaccounts and amounts.
- E. OSMRE will process amendments in accordance with the provisions for awarding new agreements in section 4-400-40 above.

#### **4-400-60 Reporting Requirements**

- A. Recipients must provide periodic performance and financial reports to OSMRE. The awarding office will define reporting frequency, but it will be no more frequent than quarterly. Reports are due 90 days after the end of each defined reporting period starting at the end of the on the first calendar quarter after the effective date of the grant.

1. Financial report on an [SF-425](#) reporting form.
  2. The narrative performance report may be filed electronically in any format. The report must describe the accomplishments under the grant during this reporting period.
- B. OSMRE will review the programmatic and financial reports. The awarding office will verify and determine if they have complied with the reporting requirements and provided all the information needed. The following list is a minimum review:
1. An official authorized to act for the recipient's organization must sign or approve the reports. Reports received by e-mail must include the name and title of the authorized official who signed the original forms, and the date signed.
  2. Reports must be received by the due dates.
  3. All reported activities and claimed costs must be in compliance with the approved State plan and Federal regulations.
  4. Programmatic reports must compare the planned and actual accomplishments of AML program activities.
  5. Financial reports must be mathematically accurate and is consistent with OSMRE's drawdown records.
  6. All claimed costs must be supported by the recipient's accounting records and they must be able to reconcile them.
- C. If any concerns are identified, the awarding office will work with the recipient to correct the report.
- D. The awarding office will prepare a monitoring statement to document the review.

#### **4-400-70 Civil Penalty Closeout**

Upon completion of each agreement, recipients must submit a final financial report ([SF-425](#)) and a final performance report. Recipients must make every reasonable effort to send the reports no later than 120 calendar days after the end of the grant. OSMRE may extend the due date for the final reports at the recipient's request. However, the recipient must provide justification for the need to extend this date.

- A. The receiving OSMRE office must perform the following actions to close out the agreement:

1. Review the closeout information provided.
  2. Verify that OSMRE have added all known changes to the grant by appropriate revisions or grant amendments.
  3. Resolve any grant suspensions, withholding of funds, disputes, and violations of grant clauses and assurances.
  4. Write a brief evaluation of the recipient's performance under the grant and keep it in the official grant file.
  5. Reconcile the inventory of Federally owned property to OSMRE's records and approve the transfer to a subsequent agreement.
  6. Verify that the agreement and the file are complete.
  7. Verify a zero-dollar balance in ASAP and FBMS (De-obligations).
- B. Process the final grant action to de-obligate any unexpended funds. See Chapter 4-100 for information on what happens with the de-obligated funds.
- C. The recipient will receive notice that the grant is closed and of the record retention and access requirements in Chapter 2-260.
- D. All civil penalty funds are available until expended or the performance period has ended, whichever occurs first. Recipients may submit subsequent requests for funding if OSMRE authorizes additional funding and apply for either a new agreement or as an amendment to an existing open agreement.

**CHAPTER 4-500  
SUBACCOUNTS AND FUND TYPES**

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- 4-500-00 Purpose
- 4-500-10 Available Subaccounts and Fund Types
- 4-500-20 Fund Type Abbreviations
- 4-500-30 Subaccount Numbers

**4-500-00 Purpose**

The purpose of this chapter is to detail all the subaccounts (i.e., cost categories) and fund types that are available under the AML fee-based, BIL, and AMLER programs.

**4-500-10 Available Subaccounts and Fund Types**

**AML Fund:** Federal Expense, Historic Coal, and State/Tribal Share are all from the AML Fund.

**U.S. Treasury Funds:** Prior Balance Funds Certified States/Tribes, Prior Balance Funds Uncertified States, FAST Act Funds, Certified in Lieu, AMLER are all from U.S. Treasury Funds.

Subaccount	Federal Expense	Historic Coal	State/Tribal Share	Prior Balance Funds Certified States/Tribes	Prior Balance Funds Uncertified States	FAST Act Funds <sup>4</sup>	Certified in Lieu	AMLER
01	FE	HC	SS	HS	HU	H1	H2	ED
03	FE	HC	SS	HS	HU	H1	H2	ED
04		HC	SS	HS	HU	H1	H2	ED
05	EFE							
07	FE <sup>5</sup>	HC	SS					
08		HC	SS	HS	HU	H1	H2	
09	FE	HC	SS	HS	HU	H1	H2	
11		HC	SS	HS		H1	H2	
16				HS		H1		
17							H2	
18								ED
19	FE	HC	SS	HS	HU	H1	H2	ED
20		HC	SS	HS		H1	H2	

<sup>4</sup> Only Wyoming is eligible to use Fixing America's Surface Transportation Act (FAST) Act funds

<sup>5</sup> Only Maryland may use FE funds for this subaccount

#### **4-500-20 Fund Type Abbreviations**

- FE** Federal Expense (Minimum Program Make up funds) as authorized in 402(g)(8) of SMCRA and 30 CFR Part 872.  
*Source: AML Fund*
- HC** Historic Coal funds as authorized in Section 402(g)(5) of SMCRA and 30 CFR Part 872. *Source: AML Fund*
- SS** State and Tribal Share as authorized in section 402(g) of the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA) and 30 Code of Federal Regulations (CFR) Part 872, Moneys Available to Eligible States and Indian Tribes. *Source: AML Fund*
- HS** Prior Balance Replacement Funds for certified states and tribes as authorized in Section 411(h)(1) of SMCRA for the purposes in section 403 of SMCRA and 30 CFR Part 872. *Source: U.S. Treasury Funds*
- HU** Prior Balance Replacement Funds for uncertified states as authorized in section 411(h)(1) of SMCRA for the purposes in Section 403 of SMCRA 30 CFR Part 872. *Source: U.S. Treasury Funds*
- H1** Fixing America’s Surface Transportation Act (FAST Act) as authorized in Public Law (PL) 114-94. *Source: U.S. Treasury Funds*
- H2** Certified in Lieu funds for certified states as authorized in 411(h)(2) of SMCRA and defined in 30 CFR Part 872. *Source: U.S. Treasury Funds*
- ED** AML Economic Revitalization (AMLER) Program as authorized by appropriation in Public Laws: 114-113, 115-31, 115-141, 116-6, and 116-94. *Source: U.S. Treasury Funds*
- EFE** Emergency Federal Expense funds (subject to availability of funds) as authorized in Section 410 of SMCRA and 30 CFR Part 872. *Source: AML Fund*

#### **4-500-30 Subaccount Numbers**

- 01 Non-Emergency Administrative**  
These are costs that cannot be allocated to individual reclamation projects, such as program policy, inventory management, program management, and program support. Engineering and project design costs should not be incorporated into subaccount 01.
- 03 Coal Project Costs (Non-Water Supply)**  
Used for actual construction, realty work, construction contracting, construction inspection, and other items allocable to a specific project in accordance with SMCRA, 30 CFR Parts 870-886. Please note that project design and engineering coal-related costs should no longer be included under subaccount 03. A new engineering and design subaccount 19, as described below, have been created to track these coal-related costs.
- 04 Water Supply Project Costs**  
Authorized by Section 403(b) of SMCRA, states/tribes may expend funds to protect, repair,

replace, construct, or enhance facilities related to water supplies adversely affected by coal mining practices. Please note that project design and engineering coal-related costs should no longer be included under subaccount 04. A new engineering and design subaccount 19, as described below, has been created to track these coal-related costs.

**05 Emergency Project Costs**

Authorized by section 410 of SMCRA. Emergency project costs to cover the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands. Emergency projects must be pre-authorized by OSMRE and directly related to AML emergency hazard abatement. Subject to availability of funds.

**07 Acid Mine Drainage Set-Aside (Uncertified)**

Authorized by Section 402(g)(6) of SMCRA, uncertified states may keep and deposit up to 30% of their State and Historic Coal Share in an interest-bearing account. Amounts deposited into this account must be used for acid mine drainage abatement and treatment. (Please note that special conditions apply to the State of Maryland as authorized by the Omnibus Appropriations Act of 2009, Public Law 111-8).

**08 Subsidence Insurance**

Authorized by Section 403(b) of SMCRA, states may expend State Share funds to develop, administer and operate a subsidence insurance program to insure private property against damage caused by subsidence from underground coal mining.

**09 Non-emergency Indirect Costs**

Non-emergency indirect costs (facilities and administrative F&A) are costs incurred by an organization for a common or joint purpose benefiting more than one cost objective or program and not readily assignable to the cost objectives specifically benefited. Please note: This subaccount describes a separate indirect costs subaccount, however, OSMRE recommends including indirect costs within the related direct cost subaccounts (in accordance with state/tribal cost allocation plan or indirect cost rate agreement) rather than setting up separate subaccounts. This may reduce the need for subsequent grant amendments moving money between subaccounts.

**11 Non-coal Reclamation Projects**

Authorized by Section 409 of SMCRA, eligible states/tribes may reclaim eligible non-coal problems. Please note that any project design and engineering non-coal related reclamation costs should not be included under subaccount 11. A new engineering and design subaccount 20, as described below, has been created to track these non-coal related reclamation costs.

**16 Prior Balance Non-Reclamation Activity (Prior Balance – Certified)**

Authorized by Section 411(h)(1) of SMCRA, certified states/tribes may use funds for approved activities authorized by their legislative organization, and that addresses the impacts of mineral development. In addition, certified states/tribes may use funds for non-reclamation activity, but with funding priority given to any remaining coal projects.



- 16 FAST Act Non-Reclamation Activity (Certified) (Introduced in 2016)**  
Authorized by the FAST Act, Public Law 114-94, certified states/tribes may use funds for approved activities authorized by their legislative organization, and that addresses the impacts of mineral development. In addition, certified states/tribes may use funds for non-reclamation activity, but with funding priority given to any remaining coal projects after certification. Only Wyoming is eligible to use FAST Act funds.
- 17 Non-Reclamation Activity (Certified In-Lieu – Certified)**  
Authorized by Section 411(h)(2) of SMCRA, certified states/tribes may use funds for non-reclamation activity, but with funding priority given to any remaining coal projects after certification.
- 18 Economic Development Related Activity (Introduced in 2019)**  
Economic development costs for projects under the Abandoned Mine Land Economic Revitalization (AMLER) Program.
- 19 Coal Projects Engineering & Design Costs (Introduced in 2019)**  
Coal-related engineering and design costs associated with site investigation including identification and mapping of hazards, environmental sample collection and data validation; costs associated with surveying design and engineering of reclamation activities including development of construction bid packages; costs associated with owner operator searches, eligibility determination, historic and archeological surveys, threatened and endangered species reports and consultation, document preparation related to NEPA, public meetings, and landowner agreements; and any other costs associated with project preparation prior to the award or initiation of a construction project. (Please note that this definition does not include construction oversight or long-term monitoring or maintenance. Any cost related construction oversight or long-term monitoring or maintenance should be included under direct project subaccounts such as 03 and 04).

Pursuant to section 403(c) of SMCRA, OSMRE maintains e-AMLIS, the central electronic database for housing the national inventory of unreclaimed AML problems affecting public health, safety, and the environment, and reclaimed sites, along with their associated reclamation costs. BIL funding (excluding funds sourced from the \$8 million that was distributed among States and Tribes for e-AMLIS financial and technical assistance) may be used by State or Tribal AML Programs to amend their inventory of coal problems. Costs associated with the activities necessary to update a State or Tribe's inventory in e-AMLIS should be included under this subaccount. Any BIL costs related to e-AMLIS that are sourced from the \$8 million should be included under subaccount 22.

Please note that this definition does not include construction oversight or long-term monitoring or maintenance. Any cost related to construction oversight or long-term monitoring, or maintenance should be included under direct project subaccounts such as 03 and 04. Any BIL costs related to long term AMD operational and maintenance costs should be included under subaccount 21.

- 20 Non-Coal Projects Engineering & Design Costs (Introduced in 2019)**  
Non-Coal related engineering and design costs associated with site investigation including identification and mapping of hazards, environmental sample collection and data validation; costs associated with surveying design and engineering of reclamation activities including development of construction bid packages; costs associated with owner operator searches, eligibility determination, historic and archeological surveys, threatened and endangered species reports and consultation, document preparation related to NEPA, public meetings, and landowner agreements; and any other costs associated with project preparation prior to the award or initiation of a construction project. (Please note that this definition does not include construction oversight or long-term monitoring or maintenance. Any cost related to construction oversight or long-term monitoring, or maintenance should be included under direct project subaccounts such as 03 and 04).
- 21 Acid Mine Drainage (AMD) Operational and Maintenance Costs**  
These are costs associated with the long-term operation and maintenance of AMD treatment facilities. This category was created as a result of the determination that States and Tribes receiving BIL AML funding may use the grant funds to operate and maintain AMD treatment facilities. Costs related to the construction of AMD treatment facilities should be included under direct project subaccounts such as 03 and 04. Costs related to the design of AMD treatment facilities should be included under subaccount 19.
- 22 BIL e-AMLIS Inventory Related Activities**  
((\$8 million distributed among States and Tribes for e-AMLIS financial and technical assistance) This BIL funding code should only be used by State or Tribal AML Programs if the funds used are sourced from the \$8 million made available to amend their inventory of coal problems. Costs associated with the activities necessary to update a State’s or Tribe’s inventory in e-AMLIS should be included under this subaccount. These costs are associated with activities necessary to improve overall data collection processes and the integrity, accuracy, and reliability of data in e-AMLIS. These funds can also be used for e-AMLIS activities to address the anticipated growth of the inventory, field reconnaissance activities, and the use of technologies to efficiently collect and manage the information (e.g., addition of AMD sites, BIL performance measures).
- 23 BIL Emergency Projects Costs**  
These costs are authorized by the BIL. As defined at 30 C.F.R. § 700.5, an emergency is a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures. Emergency project costs cover the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible lands. Emergency projects must be pre-authorized by OSMRE, directly related to emergency hazard abatement, and are subject to availability of funds.
- 24 BIL Long Term AML Reclamation Fund**  
These costs are authorized by the Consolidated Appropriations Act, 2023, which amended the BIL by authorizing eligible States and Tribes to deposit up to 30 percent of their annual BIL AML grant

amount in a long-term abandoned mine land reclamation fund established under State law.<sup>1</sup> The amounts, including any interest earned, must be expended by the State or Tribe for:

- the abatement of the causes and the treatment of the effects of acid mine drainage resulting from coal mining practices, including building, operating, maintaining, and rehabilitating acid mine drainage treatment resulting from coal mining practices;
- the prevention, abatement, and control of subsidence; or
- the prevention, abatement, and control of coal mine fires.

## **CHAPTER 4-600 AML-FEE BASED GRANTS**

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- 4-600-00 Purpose
- 4-600-10 Policy
- 4-600-20 Eligibility
- 4-600-30 Fund Distribution
- 4-600-40 Grant Table Distribution

### **4-600-00 Purpose**

The purpose of this chapter is to provide an overview of the AML-Fee Based program. This chapter will provide State/Tribal AML Programs information concerning the distribution of grant funds and how the funds are allocated.

### **4-600-10 Policy**

Title IV of SMCRA created the AML Reclamation Program which has been funded by a fee assessed on each ton of coal produced since August 3, 1977. As originally enacted, SMCRA authorized collection of the fee for 15 years. To sustain the program, Congress has amended SMCRA to change the structure of the fee three times and reauthorize fee collection eight times since its inception. Most recently, this was done in 2021 under the authority of Public Law No. 117-58 which adjusted the fee structure and extended OSMRE's fee collection authority through September 30, 2034.

The AML-Fee Based grants program is subject to all the requirements of the following:

- Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224
- 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
- The Davis-Bacon Act, as Amended
- Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, also known as the Bipartisan Infrastructure Law (BIL)
- Build America Buy America Act

The reclamation fee rate per ton has changed overtime. See Figure 1 for a summary of reclamation fee rates since 1977:

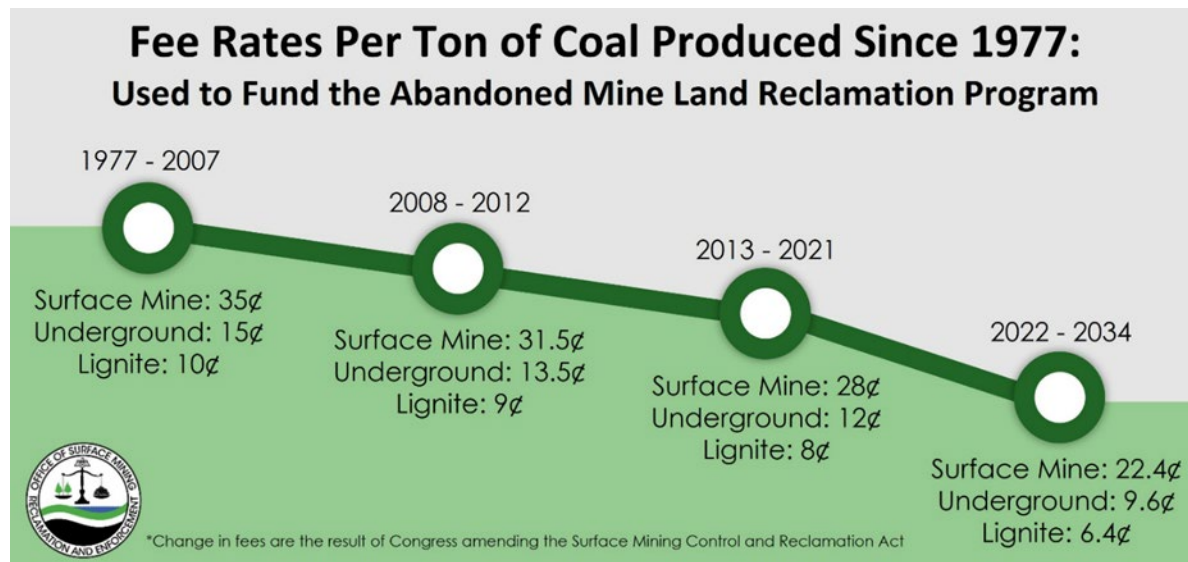


Figure 1: Fee Rates Per Ton of Coal Produced Since 1977

#### 4-600-20 Eligibility

States with approved AML programs, or eligible Indian tribes, are qualified for Abandoned Mine Land grants that support reclamation efforts.

#### 4-600-30 Fund Distribution

The grant distribution is determined annually using a pre-set formula authorized by SMCRA. This formula takes into account AML fee collections, historic coal production, the various shares within the AML Fund (i.e., State/Tribal Share, Federal Expense Share, Historic Coal Share), the minimum program supplemental adjustments, the AML inventory and, any other special Appropriations Act provisions (e.g., sequestration). The amounts are based on the fees paid by active coal mine operators on each ton of coal mined.

Funding for Abandoned Mine Land (AML) fee-based grants come from coal receipts collected from December 1 through November 30 and deposited in the AML trust fund, as well as general Treasury funds.

The State and Tribal share allocated, which is 50% of total collections, will be the starting point for the State Share distribution. The Historic Coal funds include 30% of total collections plus funds transferred to Historic Coal. Transferred funds are from collections for certified States and Tribes. The sequestered funds are not part of the unappropriated balance as the Federal budget authority states that these AML funds are unavailable and requires them to be tracked in a separate account.

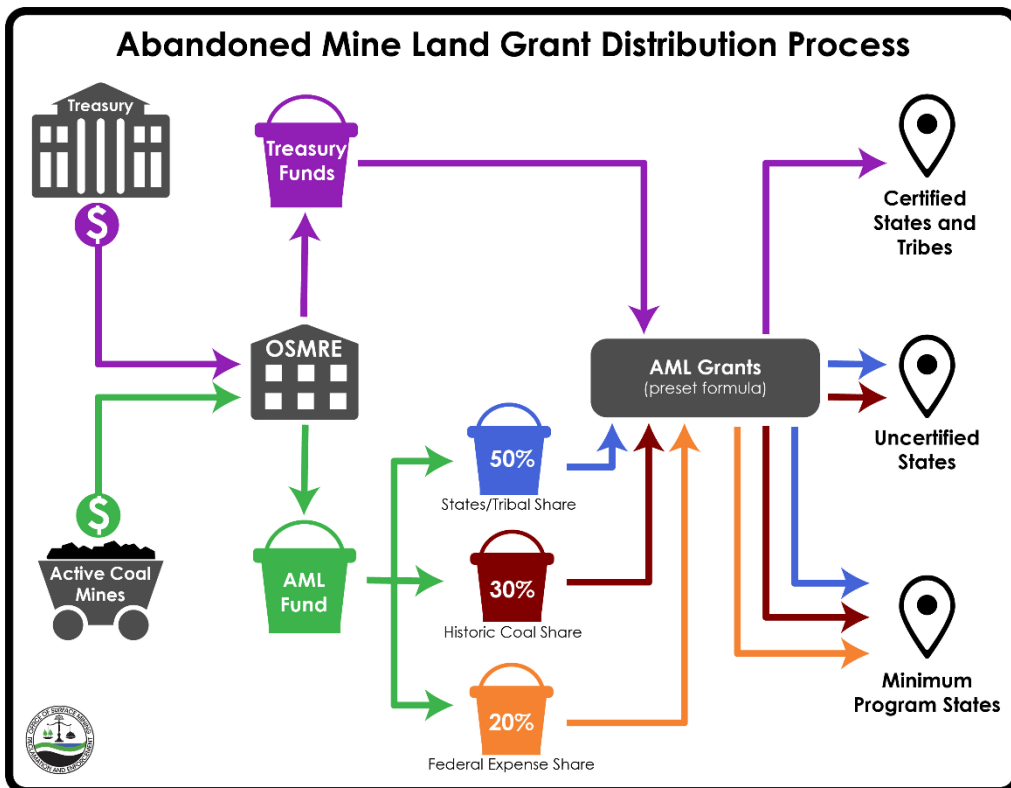
## 4-600-40 Grant Table Distribution

Certified States and Tribes are ineligible to receive their State or Tribal Share that is collected in fees as part of their AML distribution. Certified States and Tribes are eligible for Treasury funding equivalent to 100% of their State and Tribal share allocations.

Historic coal represents the 30% allocation plus the amount transferred from certified States and Tribes equal to their Certified in Lieu distribution. This total is distributed based on each State's percentage of coal tonnage produced before the passage of SMCRA in 1977. OSMRE used tonnage data from OSMRE's Environmental Impact Statement of 1980. Only States and Tribes that are uncertified and have unfunded Priority 1&2 problems in the AML inventory are eligible for Historic Coal funds. As a result, tonnage percentages are adjusted to exclude ineligible States and Tribes. Each State's individual calculated percentage is multiplied by the total historic coal funds available to calculate a potential distribution.

The State and Tribal Share, Certified In Lieu, and Historic Coal distributions for each State and Tribe are added together to produce a preliminary total distribution. Only States and Tribes that are uncertified and have unfunded Priority 1&2 coal problems in the AML inventory are eligible for minimum program funding. The Minimum Program Need column shows the amount each State needs to bring total funding up to \$3,000,000 or the amount of the unfunded high priority coal problems in its inventory, whichever is lower.

See the flowchart below for a visual representation of the distribution process.



## **CHAPTER 4-650 INFRASTRUCTURE INVESTMENT AND JOBS ACT**

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- 4-650-10 Policy
- 4-650-20 Eligibility
- 4-650-30 Financial Assistance Program
- 4-650-40 Prioritization
- 4-650-50 BIL AML Funding
- 4-650-60 BIL Requirements
- 4-650-70 Build America Buy America
- 4-650-80 Program Management
- 4-650-90 Congressional Reporting

### **4-650-00 Purpose**

The purpose of this chapter is to provide an overview of the Infrastructure Investment and Jobs Act (IIJA), or commonly known as the Bipartisan Infrastructure Law (BIL), assistance program. This chapter will provide State/Tribal AML Programs information concerning the interpretation of the BIL, project eligibility, and priorities for the use of BIL AML grant funds. It also clarifies how BIL AML grant funding differs from the traditional fee-based AML grant distributions authorized by SMCRA.

### **4-650-10 Policy**

BIL funds will expand the AML Reclamation Program to meet the priorities described in the BIL and the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended and the following:

1. The Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. No. 95-87, as amended.
2. Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, also known as the Bipartisan Infrastructure Law (BIL).
3. Division DD, Title VIII, Sec. 801 of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328.
4. The Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224.
5. 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and

## Audit Requirements for Federal Awards

6. Policy guidance contained in this manual.

### 4-650-20 Eligibility

Pursuant to section 40701(b)(2) of the BIL, eligible grant recipients include both certified and uncertified States and Tribes carrying out approved AML Programs.

### 4-650-30 Financial Assistance Program

BIL funds will ***expand*** the AML Reclamation Program to fund ***“Coal Only Activities”*** described in the BIL, in addition to those already funded under Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended. The objective of the BIL AML Program is to address coal AML related problems, which include coal AML emergencies, physical hazards resulting from legacy coal mining that pose a threat to public health, safety, and the environment (including acid mine drainage), and water supplies that has been adversely affected by legacy coal mining. In addition, the BIL ***encourages*** States and Tribes to ***fund projects*** that provide employment for current and former employees of the coal industry.

In accordance with [Executive Order 14008](#), OSMRE is to consider ways to encourage, and as appropriate, ensure that recipients of Federal funds advance environmental justice. Thus, States and Tribes are encouraged to select projects that support the Justice40 Initiative goal of providing 40 percent of the overall program benefits to disadvantaged communities. States and Tribes may use BIL AML grants to address coal AML problems, such as:

1. Hazards resulting from legacy coal mining that pose a threat to public health, safety, and the environment within their jurisdictions (including, but not limited to, dangerous highwalls, waste piles, subsidence, open portals, features that may be routes for the release of harmful gases, acid mine drainage, etc.).
2. Water supply restoration (infrastructure).
3. Coal AML emergencies.
4. Deposit up to 30% of annual BIL AML grant funds in a State or Tribal long-term abandoned mine land reclamation fund to be expended on the abatement and treatment of acid mine drainage, subsidence, and coal mine fires.

BIL grants will be processed in 60 days regardless of AML certification status.

### 4-650-40 Prioritization

In general, BIL AML grants may only be used on one or more of the following:

1. Priority 1 Projects – These projects protect public health, safety, and property from extreme danger of



adverse effects of coal mining practices, including the restoration of adjacent land and water resources and the environment.

2. Priority 2 Projects – These projects protect public health and safety from adverse effects of coal mining practices, including the restoration of adjacent land and water resources and the environment.
3. Priority 3 Projects – These projects restore land and water resources and the environment previously degraded by adverse effects of coal mining practices. These projects may include the design, construction, operation, maintenance, and rehabilitation of acid mine drainage (AMD) treatment facilities regardless of whether they are part of a qualified hydrologic unit.
4. Water Supply Restoration Projects - protection, repair, replacement, construction, or enhancement of facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.
5. AML Emergency Projects - Emergency projects that restore, reclaim, abate, control, or prevent adverse effects of coal mining practices, on eligible lands when an emergency exists constituting a danger to the public health, safety, or general welfare and no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent adverse effects of coal mining practices.

The “STREAM Act” amended section 40701(c) of the BIL to authorize eligible States and Tribes to retain up to 30 percent of the “total amount of a grant made annually” under section 40701(b)(1) of the BIL in a “long-term abandoned mine land reclamation fund established under State law, from which amounts (together with all interest earned on the amounts) are expended by the State or Tribe” for (1) the abatement of the causes and the treatment of acid mine drainage resulting from coal mining practices including costs associated with acid mine drainage treatment systems; (2) the prevention, abatement, and control of subsidence; or (3) the prevention, abatement, and control of coal mine fires.

#### **4-650-50 BIL AML Funding**

Annual BIL AML grant amounts are calculated using a congressionally mandated formula based on the number of tons of coal historically produced in the States or from applicable Indian lands before August 3, 1977. Adjustments will be made to ensure the total amount of the distributions to any State or Tribe is not less than \$20 million over the life of the program. The period of performance for BIL grants will be five-years, with an option for a one-time no-cost extension of up to one year, subject to OSMRE’s review and approval. Any funds remaining at the conclusion of each six-year (5 years + 1 year no cost extension) period of performance, OSMRE will determine how remaining funds are addressed on a case-by-case basis or until otherwise determined in future memoranda.

#### **4-650-60 BIL Requirements**

In spending BIL AML funds, States and Tribes should, consistent with applicable State or Tribal law, prioritize providing employment opportunities to current and former employees of the coal industry, when such employees are available to work on projects within the region, State, or local area. OSMRE will work with

States and Tribes to incorporate such prioritization into their Reclamation Plans. Measures to implement these priorities may include:

1. Requiring contractors to affirm that they will give preference to current and former employees of the coal industry in any hiring for BIL-funded AML projects.
2. Requiring contractors to report on the extent to which current and former employees of the coal industry have been employed in any AML work the contractors perform.
3. Requiring contractors to retain data that can substantiate the reported information.
4. Providing to OSMRE the information reported by the contractors as part of the State or Tribe's regular AML reporting processes.

#### **4-650-70 Build America Buy America**

BIL AML grant recipients will be required to comply with all applicable Federal grant award requirements. BIL-funded projects are subject to the Build America, Buy America (BABA) Act, which was enacted as part of BIL.

#### **4-650-80 Program Management**

Each eligible State and Tribe will need to submit a separate grant application for BIL AML grants from the traditional AML fee-based grants through GrantSolutions, or current system, but OSMRE will continue working with the States and Tribes in order to develop procedures that minimize burdens on applicants. States and Tribes are required to ensure that expenditures for the two programs are tracked separately.

While BIL AML grants may not be used to directly fund pre-apprenticeships, apprenticeships and training programs, States and Tribes are encouraged to strengthen existing partnerships with governmental agencies and non-governmental entities that provide these types of services and to strategize on ways to promote these types of opportunities for BIL AML projects, including by identifying workforce needs for AML projects. In carrying out their programs with BIL AML funding, OSMRE encourages States and Tribes, consistent with applicable State or Tribal law, to:

1. Use procurement processes that incentivize AML contractors to hire current and former employees of the coal industry when bidding on BIL-funded AML projects and require the collection of information from AML contractors about the number of current and former coal industry employees they employ.
2. Aggregate projects into larger statewide or regional contracts as part of their procurement processes, to improve efficiencies in their BIL AML grant funding.
3. Prioritize aggregated or larger projects in selecting projects to be funded.
4. Support pre-apprenticeship, registered apprenticeship, and youth training programs that open pathways to employment by collaborating with other Federal, State, Tribal, and local government agencies and non-governmental organizations that have the relevant expertise in these areas, including the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization.
5. Require contractors to support safe, equitable, and fair labor practices by adopting collective bargaining

agreements, local hiring provisions (as applicable), project labor agreements, and community benefits agreements.

6. When applicable, select project designs that reduce methane emissions from AML sites.
7. Incorporate input from disadvantaged communities, communities of color, low-income communities, and Tribal and Indigenous communities into prioritization criteria and the method for selecting projects to be funded.

If any of the previous activities cannot be reasonably accomplished in carrying out the BIL AML program, States and Tribes are encouraged to include in their grant application a detailed rationale for why the specified activity, or activities could not be implemented.

Consistent with 30 C.F.R. §§ 874.16 and §§ 875.20, every successful bidder for an AML contract must be eligible under 30 C.F.R. §§ 773.12, 773.13, and 773.14 at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. Permit eligibility evaluations are usually conducted by completing an evaluation in the Applicant Violator System (AVS). Learn more on the [AVS Program website](#).

#### **4-650-90 Congressional Reporting**

OSMRE is required to submit a report to Congress within six years of the first BIL AML grant allocation to State and Tribal AML Programs. This report will detail the progress made under the BIL AML provisions in addressing outstanding reclamation needs under subsections (a) and (b) of section 403 and section 410 of SMCRA. In preparing this report, OSMRE will solicit input from State and Tribal AML Programs on the progress made in addressing outstanding coal AML problems.

## **CHAPTER 4-700**

### **ABANDONED MINE LAND ECONOMIC REVITALIZATION**

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- 4-700-10 Policy
- 4-700-20 Eligibility
- 4-700-30 AMLER Financial Assistance Program
- 4-700-40 AMLER Funding
- 4-700-50 AMLER Requirements
- 4-700-60 Real Property

#### **4-700-00 Purpose**

The purpose of this chapter is to provide a general overview of the Abandoned Mine Land Economic Revitalization (AMLER) financial assistance program. The guidance in this chapter applies to all AMLER agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to a state or tribe.

#### **4-700-10 Policy**

States and federally recognized Indian tribes with approved reclamation plans under section 405 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to accelerate the remediation of abandoned mine land (AML) sites with economic and community development end uses of Federal financial assistance per 2 CFR Part 200. Please check the [AMLER Guidance](#) for the most up to date information.

#### **4-700-20 Eligibility**

Sites eligible under the AMLER program:

1. Un-reclaimed Priority 1, 2, or 3 sites (i.e., AML lands and polluted waters) listed in e-AMLIS.
2. Previously reclaimed AML lands and polluted waters.
3. Land adjacent to un-reclaimed or previously reclaimed AML lands and polluted waters as justified by the State, Tribe, and/or the communities impacted by historic coal production.

Currently permitted Title V mine sites are not eligible to receive AMLER funds. Formerly permitted mine sites reclaimed after August 3, 1977, that are adjacent to, or connected with, an eligible AMLER project may be included in AMLER funding.

#### **4-700-30 AMLER Financial Assistance Program**

State/Tribal AML Programs, in consultation with State, Tribal, and local economic/community development authorities, must develop eligible projects that demonstrate a nexus between AML land and water reclamation, and economic and community development. The AMLER Program is an opportunity for local communities and States/Tribes to return impacted areas to productive reuse, which should be defined by the State/Tribe in cooperation with local communities, to achieve the economic and community development goals identified for the community and/or region. The AMLER Program offers States, Tribes, and local communities flexibility in deciding which projects offer the greatest opportunities within their communities. Below are the options for the State/Tribe to consider for their project:

1. “Category A” Projects (Reclamation with Development): A Category A project includes both an eligible project as defined in section 4-700-20 and economic and community development activities associated with the eligible project, and is likely to result in positive, measurable economic and community development outcomes.
2. “Category B” Projects (Reclamation for Potential Development): This is a project reasonably likely to create favorable conditions for the economic development of the project site or promote the general welfare through economic and community development of the area in which the project is conducted.

#### **4-700-40 AMLER Funding**

States, Tribes, and local communities have the flexibility to use AMLER funds for both the reclamation of impacted lands and waters and brick and mortar needs related to the end-use development project. The AMLER Program offers maximum flexibility in this regard, letting States, Tribes, and local communities balance the needs of an individual project with the ability to fund other priority AMLER projects.

Where resources may help expand a project’s scope or outcome, States, Tribes, and local communities are encouraged to identify and leverage other public and private funding sources to be used in conjunction with funding provided through the AMLER Program. States and Tribes are encouraged to review opportunities for leveraging funds and other resources made available by other Federal offices.

Recipients seeking to utilize remaining funds from previous awards must submit an amendment request to the regional OSMRE grants staff. Amendment requests at a minimum must provide strong justification to include, remaining grant funds to be utilized, the corresponding year for de-obligation and approved proposed projects identified for the re-obligation of funds. Allowing the usage of prior year grant funds will allow for proper close-out of previous fiscal years.

#### **4-700-50 AMLER Requirements**

Each State/Tribal AML Program is responsible for developing eligible AMLER projects. Each AMLER project proposal should include a description of how, when, where, and for what reclamation, economic development, or community development purposes AMLER funds will be used. States/Tribes should provide summary level information about the project’s purpose, cost, partnerships and/or leveraged funds and the expected economic

benefits that lead to the project's selection.

Once State/Tribal AML Programs, working with their local economic development authorities and local communities, conceptually develop their AMLER project proposals, the proposals must be submitted to the servicing OSMRE Field Office. OSMRE will work with State/Tribal AML Programs to conduct a review of the proposed projects on a rolling basis. OSMRE's review and approval process occurs in two phases.

1. OSMRE will vet project proposals to identify at the early stage any concerns about the project or its eligibility. OSMRE will advise the State/Tribe of any concerns with the project or will provide confirmation that the project does not raise any concerns at this early stage. Once the proposed project has been vetted, and if it receives OSMRE's preliminary approval, the State/Tribe should then proceed to develop the detailed project design, technical analysis, legal and regulatory requirements necessary, so that the project can advance to the next phase.
2. The second and final phase involves the environmental review, e-AMLIS update, and OSMRE's issuance of an Authorization to Proceed (ATP).

#### **4-700-60 Real Property**

The requirements for the acquisition, use, management, and disposal of real property acquired under an AMLER grant are established under [2 CFR 200.311](#). OSMRE recognizes that on rare occasions it may be necessary to acquire land using AMLER funds to facilitate the accelerated economic development of an AMLER project. State/Tribal AML programs should clearly demonstrate in the proposal that acquisition of the property is necessary to achieve the goals of the AMLER project.

Whenever a State/Tribal Program is seeking approval to use AMLER funds to purchase an interest in real property, the SF-429-B, request to acquire, improve, or furnish, must be submitted to OSMRE. All aspects of the purchase must be in compliance with applicable laws and regulations relating to real estate purchases.

When such purchases occur, while OSMRE does not typically become the owner of the land, OSMRE does retain an interest. At a minimum, that interest is to ensure that State/Tribal AML Program maintains the land in accordance with the purpose and conditions set out in the financial assistance award. When the land is no longer needed or utilized for that purpose, in accordance with 2 CFR Part 200, the State/Tribal AML Program must dispose of or revert title to the land in accordance with award documents, deed, or other legal instrument.

# **Annex H: FFAM Part 5 – Regulatory Grant Program**

## **CHAPTER 5-100 REGULATORY PROGRAMS OVERVIEW**

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- 5-100-10 Policy
- 5-100-20 Regulatory Financial Assistance Program
- 5-100-30 Budget Estimates for Regulatory Funding
- 5-100-40 Distribution of Annual Regulatory Grant Funding
- 5-100-50 Forfeiture Costs

### **5-100-00 Purpose**

The purpose of this chapter is to provide an overview of the financial assistance program requirements for Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95-87. The guidance in this chapter applies to all Title V regulatory assistance programs and agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to a state or Tribe with active coal mining activities.

### **5-100-10 Policy**

Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95-87, authorizes OSMRE to fund state, tribal and Federal programs to control the environmental impacts of surface coal mining. It authorizes states and tribes to develop and assume regulatory primacy, act as the regulatory authority, and operate their coal regulatory program. OSMRE regulations at [30 CFR Chapter VII](#) implement SMCRA.

### **5-100-20 Regulatory Financial Assistance Program**

OSMRE provides financial assistance under the following programs to states and tribes to implement the coal regulatory provisions of Title V:

- A. Interim grants to fund the initial regulatory program.
- B. Program development grants to assist states and tribes to develop a permanent program.
- C. Administration and Enforcement (A&E) grants to states and tribes to operate an approved permanent regulatory program. See 5-110 of this manual for more information.
- D. Federal lands cooperative agreements to States which elect to administer their approved regulatory program on Federal lands. See 5-120 of this manual for more information.

- E. Small Operator Assistance Program (SOAP) operational grants to states to assist small coal mine operators to meet their permit requirements. See 5-130 of this manual for more information.

### **5-100-30 Budget Estimates for Regulatory Funding**

- A. The recipient must send their estimated program budget eighteen months prior to the start of every federal Fiscal Year. The program's budget must be broken down by the categories listed below. OSMRE will review the submitted estimates and use the information in preparing the Federal budget request.
  1. 18 month – due April 1, request goes out late February or early March every year. (i.e., February of FY 2023 asking for FY 2025)
  2. Include the functional categories such as, permitting, inspection and enforcement, SOAP administration, lands unsuitable, and other administrative costs.
  3. Include the object class categories: personnel and fringe benefits, travel, equipment, supplies, contractual, other, and indirect costs.
  4. If applicable, show the estimated costs of Federal lands and SOAP operations.
- B. Three months before the start of the fiscal year, the recipient must submit an updated estimate of their regulatory funding needs. They should follow the same format as the eighteen-month estimates.
  1. 3-month update – due July 1, request goes out in May or early June for the upcoming FY (i.e., June of FY 2023 asking for FY 2024).

### **5-100-40 Distribution of Annual Regulatory Grant Funding**

- A. If enough regulatory funding is available, OSMRE will distribute the amount recommended by the awarding office to each state and tribe. The distribution process only designates funds for a state or tribe, it does not provide the funding.
- B. If there are not enough funds available to cover the needs of every state and tribe, OSMRE will distribute the available funds as equitably as possible.
- C. When OSMRE distributes a specific amount of funding to a recipient, it is not an agreement to award a grant for the total amount. The recipient must still apply for a grant. OSMRE will approve or disapprove the application based on the package provided. See 5-200 for more information on the application and 5-210 of this manual for the review and award process.
- D. When Congress appropriates regulatory grant funds, they specify whether OSMRE



may obligate the funds during a period of one fiscal year or two fiscal years. OSMRE will normally award regulatory grants for a twelve-month period using the current fiscal year's annual appropriation.

### **5-100-50 Forfeiture Costs**

This section explains which reclamation activities associated with bond forfeiture sites are allowable costs under the regulatory program grant. Recipients must fund activities which are not allowable under the grant with the proceeds of the forfeited bond or other State resources.

- A. Sites forfeited under the permanent program.
  - 1. Recipients may fund administrative costs not directly associated with site-specific reclamation from their regulatory grant if the costs are part of the forfeiture process or if the activities would have been performed had there been no forfeiture. Allowable costs may include site inventories, site priority ranking activities, forfeiture processing, site inspections, and contract monitoring to the extent that it does not exceed the level of effort that would have been expended had there been no forfeiture.
  - 2. Recipients cannot use grant funds for costs associated with site-specific activities directly related to completion of the reclamation plan. Unallowable costs include redesign of a reclamation plan after forfeiture and the reclamation work itself. Recipients must fund these costs from the proceeds of forfeited bonds or with other state resources.
- B. Sites forfeited under the Initial Program
  - 1. SMCRA's Initial Regulatory Program did not require reclamation bonds. However, section 505(b) of SMCRA did not prevent a state from imposing bonding requirements for initial program sites as a more stringent environmental control. Therefore, administrative costs related to bond forfeiture on initial program sites may be an allowable program cost if an approved regulatory program contains bonding provisions.
  - 2. Administrative costs associated with "bid preparation" are allowable program costs, to the extent that they do not include the costs of designing or redesigning the approved reclamation plan.
    - a. Eligible costs include those related to bid specification preparation, such as planimeter work and office calculations needed to determine areas and volumes. Reclamation costs are allowable to the extent that they would normally be incurred regardless of the quality of the original reclamation plan. Such costs include site visits and limited surveys to obtain data necessary for the preparation of bid specifications, including those conducted to determine drainage control needs, backfilling and grading volumes or the size of areas in need of seeding or soil amendments.

- b. Ineligible costs include those related to the preparation of new maps, plans or drawings and those related to site surveys conducted for the purpose of horizontal or vertical control, acquisition of photogrammetric data or preparation of a new reclamation plan or design. The costs of the reclamation work itself are also ineligible.

**CHAPTER 5-110**  
**PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT GRANTS**

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5-110-50 Non-Federal Funding Requirements for A&E Grants  
5-110-60 Allowable Costs for A&E Grants  
5-110-70 Unallowable Costs for A&E Grants  
5-110-80 Performance Period for Program Development and A&E Grants

**5-110-00 Purpose**

The purpose of this chapter is to explain the requirements for regulatory Program Development and Administration and Enforcement (A&E) grants awarded to a state or Tribal coal regulatory program by the Office of Surface Mining Reclamation and Enforcement (OSMRE), SMCRA 7.11 J 5 B.

**5-110-10 Regulatory A&E Grants**

OSMRE awards regulatory A&E grants to support the Regulatory program approved under Section 503 of the Surface Mining Control and Reclamation Act (SMCRA).

**5-110-20 Regulatory Program Development Grants**

An applicant may apply for a program development grant for any period for which it does not have an approved state or Tribal program. This is limited to periods during:

- A. The initial development of a program.
- B. The revision of a program which has been disapproved by the Secretary.
- C. The revision of a program from which the Secretary has withdrawn their approval.

**5-110-30 A&E Grant Eligibility**

To be eligible for an A&E grant, a state or Tribe must meet both of the following requirements:

- A. Have an approved program to regulate surface coal mining.
- B. Must have a single agency designated in writing by the governor or head of the Tribal

governing body to receive and administer the grants.

#### **5-110-40 Program Development Grant Eligibility**

In order to receive a Program Development grant, the Governor of a State or Leader of the Tribe shall submit a letter of designation to the Director of the awarding agency to submit the grant applications and to receive and administer the grants (30 CFR 735.11).

#### **5-110-50 Non-Federal Funding Requirements for A&E Grants**

- A. States must provide non-Federal funds to cover part of the costs of operating their program.
  - 1. SMCRA allows for Federal funding up to 50% of the total costs for administering and enforcing the program on non-Federal lands and dependent upon the language in each state's cooperative (primacy) agreement.
  - 2. If this is a recipient's first A&E grant and they have not received a previous award from OSMRE, then the awarding office may award up to 80% of the total costs for administration and enforcement of the program.
  - 3. If this is a recipient's second year of funding, OSMRE may award up to 60% of the total costs.
  - 4. The awarding office may reimburse the recipient up to 100 percent of the total costs to regulate Federal lands. See 5-120 of this manual for policies on Federal lands funding.
- B. Currently, tribes are not required to provide non-Federal funding.

#### **5-110-60 Allowable Costs for A&E Grants**

- A. Recipients may charge costs to their grant if they are necessary to administer and enforce the program and if they meet one of the following standards:
  - 1. Support costs are for the activities identified in the program, including such activities as equipment and support services.
  - 2. Costs are to develop and amend the approved program.
- B. Costs must be allowable according to the Office of Management and Budget's (OMB) at [2 CFR Part 200](#). See Chapter 3-100 of this manual for more information.
- C. Recipients may charge costs to purchase real property only if they comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

### **5-110-70 Unallowable Costs for A&E Grants**

Recipients are not to charge the following to the Regulatory A&E Grant:

- A. Not related to the administration and enforcement of the permanent coal regulatory program.
- B. Activities that significantly deviate from those identified in a recipient's approved program.
- C. Give financial assistance to mine operators. However, they may provide general technical assistance.
- D. Costs which are unallowable according to the OMB cost principles ([2 CFR Part 200](#)).

### **5-110-80 Performance Period for Program Development and A&E Grants**

Typically, OSMRE awards regulatory Program Development and A&E grants for a twelve-month performance period.

## **CHAPTER 5-120**

### **FUNDING FOR STATE REGULATION ON FEDERAL LANDS**

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- 5-120-50 Federal Lands Funding Options
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- 5-120-70 Application Review for Federal Lands Funding
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#### **5-120-00 Purpose**

The purpose of this chapter is to explain the policies and procedures for the Office of Surface Mining Reclamation and Enforcement (OSMRE) to fund states to regulate surface coal mining on Federal lands within their borders. These policies and procedures apply to recipients if their approved state coal Regulatory program has an approved Federal lands cooperative agreement.

This does not apply to any Tribal Lands.

#### **5-120-10 Regulating Mining on Federal Lands within State Borders**

Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) allows any state with an approved Regulatory program to enter into a cooperative agreement with the Secretary of the Interior to regulate surface coal mining and reclamation operations on Federal lands within the state. To approve a Federal lands cooperative agreement, the Secretary must determine in writing that the state has the necessary personnel and funding to fully implement the agreement.

#### **5-120-20 Providing Federal Lands Funding**

OSMRE awards funds to a recipient for a Federal lands cooperative agreement as a component of the Regulatory program Administrative & Enforcement (A&E) funding. This combines all annual funding in a single regulatory grant for the state.

#### **5-120-30 Limitations on Federal Lands Funding**

- A. Section 705(c) of SMCRA limits the amount of Federal funds that OSMRE awards to a recipient for Federal lands funding to the amount estimated it would cost the Federal awarding agency if OSMRE did the regulatory work.
- B. OSMRE regulations at [30 CFR 735.16\(c\)](#) specify that recipients may not receive more money than their actual costs for their regulatory operations on Federal lands.

## 5-120-40 Calculating Federal Lands Costs

OSMRE has established three options for recipients to calculate their Federal lands funding. Recipients may choose which of these three options they use as the basis for the amount of Federal lands funding they request in their grant application.

### A. Mine Acreage Option.

1. Under this option, recipients use the percentage of all permitted Federal lands acres to all permitted acres in the state to determine the split between Federal and non-Federal program costs.
2. Determine the number of permitted acres of Federal land and the total number of permitted acres in their state. List each mine, which is under permit, or for which a permit is anticipated, during the grant period, and the number of Federal acres and total acres for each mine. Calculate the total number of Federal lands acres and total acres in the state. Recipients must include this list in their grant application.
3. Divide the Federal lands acres by total acres to calculate the percentage of Federal lands acres. Recipients can use the percentage of Federal lands acres as the percentage of their total program costs which are for Federal lands operations. Apply this percentage to their estimate of the total cost of their program for this period to determine the costs for Federal lands operations. The remaining costs are the non-Federal lands costs. Calculate the final budget funding split by applying the 50% match requirement to the non-Federal lands costs.
4. For example, if 30% of a state's total permitted acreage is on Federal lands, and then 30% of that program's total costs would be Federal lands costs which are 100% Federally funded. The remaining 70% of the program costs would be for non-Federal lands and would be split evenly between Federal and non-Federal funds. If the total program costs for this state were \$1,000,000, the state would apply for Federal funding of \$650,000 (\$300,000 for Federal lands costs and \$350,000 for 50% of the non-Federal lands costs) and show \$350,000 in state funds for the other 50% of the non-Federal lands' costs.

### B. Area-Weighted Acreage Option.

1. Under this option, the Federal lands acreage is adjusted up to reflect the additional requirements and higher costs states experience in working on Federal lands.
2. For each permit area, calculate the percentage of Federal lands within the total of all lands (non-Tribal) in the permit area. Then determine the appropriate funding level for each permit area using the following table:

<b>If the Federal lands percent is:</b>	<b>Then the Federal lands funding percent is:</b>	<b>And the Federal funding percent (with 50% match) is:</b>
0%	0%	50%
>0 but < 25%	25%	62.5%
>25 but < 50%	50%	75%
>50 but <75%	75%	87.5%
>75%	100%	100%

3. Multiply the Federal funding percent for each permit area by the total acreage for the permit to determine the Federally funded acres in each permit area. List each mine which is permitted or expected to be permitted during the grant performance period showing the permitted Federal lands and total acres, the Federally funded acres calculation for each mine, and the total Federally funded acres. Include the list in the grant application.
4. Divide the total Federally funded acres in the state by the total permitted acres to get the percentage of Federally funded acres. Then apply the percentage of Federally funded acres to the estimated total state regulatory program costs to determine the Federal lands funding. The remaining program costs, representing operations on non-Federal lands, must be funded with 50% Federal and 50% state share funds.

C. **Workload Option.**

1. Under this option, recipients calculate the Federal cost sharing percentage based on their detailed workload projections for the grant period. To estimate these costs, multiply the average costs for permitting and inspection and enforcement activities by the workload anticipated during this grant period. Recipients may also add any unique workload costs not included in the permitting or inspection and enforcement to the cost estimate.
2. Recipients must use their own system to determine what percent of the total projected workload for the grant period involves regulation on Federal lands. Recipients must provide item-specific information in the analysis of their workload and include data from their records and other supportable information to justify the calculations for the Federal lands cost and the Federal/state funding split in the grant application.

**5-120-50 Federal Lands Funding Options**

States with approved Federal lands cooperative agreements may choose not to request additional funding above the fifty percent normal cost-sharing ratio for their work on non-Federal lands. If they do not request Federal lands funding, they do not have to separate costs for work on Federal



lands or provide any of the additional information or calculations required above.

#### **5-120-60 Federal Lands Funding for Grant Application**

- A. Recipients must prepare each grant application in accordance with any requirements of the approved cooperative agreement and in accordance with grant application procedures outlined in 5-200 of this manual. In addition, as part of the grant application for Federal lands funding, recipients must provide the following information:
  - 1. A detailed breakdown of the estimated total cost of implementing the regulatory program into Federal and non-Federal lands components. Recipients must explain and document the option and calculations used.
  - 2. If recipients use the acreage or area-weighted acreage options, they must provide a list of each mine and the actual permitted acreage of Federal and total lands.
  - 3. If they use the workload option, recipients must include a detailed estimate of the Federal lands workload, discussed in terms of the specific permitting, inspection and enforcement, and administrative requirements of their state regulatory program and the cooperative agreement.
- B. Recipients should calculate the Federal lands funding using their preferred option. Then add it to the Federal share of the non-Federal lands funding (normally 50% of the cost) to determine the total regulatory grant request. When the awarding office reviews the application, OSMRE will determine whether the calculation is adequately documented and the proposed budget meets the funding limits in this section.

#### **5-120-70 Application Review for Federal Lands Funding**

The awarding office reviews the grant application, cost estimates, and workload information, if workload option is selected, the applicant submitted. OSMRE will compare the state costs for Federal lands. The awarding office will review the application and the applicant's method of calculating the Federal lands costs estimates for accuracy and completeness.

#### **5-120-80 Special Requirements for Federal Lands Expenditures**

- A. Recipient must account for Federal lands costs consistently. They must use the option chosen in their grant application and the resulting match percentage that OSMRE approved in the grant award, throughout the entire grant period to charge costs and report regulatory expenditures. The awarding officer will verify the match percentage for completeness and accuracy before closeout.
- B. OSMRE will not pay expenses for litigation relating to Federal lands issues. This is a responsibility of the Department's Office of the Solicitor.

## **CHAPTER 5-130**

### **SMALL OPERATOR ASSISTANCE PROGRAM (SOAP) GRANTS**

#### **Table of Contents**

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- 5-130-10 SOAP Grant Definition
- 5-130-20 SOAP Funding Limitations
- 5-130-30 SOAP Grant Performance Period
- 5-130-40 Allowable Costs for SOAP Grants
- 5-130-50 Limitations on Administrative Costs
- 5-130-60 Unallowable Costs for SOAP Grants
- 5-130-70 SOAP Recipients That No Longer Qualify
- 5-130-80 Reimbursing SOAP Funds

#### **5-130-00 Purpose**

The purpose of this chapter is to explain the policies and procedures for the Small Operator Assistance Program (SOAP) grant awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE). A SOAP grant provides funds to a state or tribe with an approved permanent coal regulatory program to operate a program to help small coal mining operators get the scientific and technical information they need to apply to the state/tribe for a permit to mine coal.

#### **5-130-10 SOAP Grant Definition**

Section 507(c) of the Surface Mining Control and Reclamation Act (SMCRA) authorizes OSMRE to provide SOAP funding. Recipients use SOAP funds to contract with qualified laboratories and consultants to collect, analyze, and interpret hydrologic and geologic data and produce technical reports for the small mine operators. Surface coal mining operators whose production at all their locations will not exceed 300,000 tons in a continual consecutive 12-month period would be eligible to receive SOAP assistance.

#### **5-130-20 SOAP Funding Limitations**

- A. If funds are available, the following guidelines apply to SOAP funding:
  - 1. Recipient may be reimbursed for up to 100% of the allowable SOAP costs.
  - 2. If the available funds are insufficient to fully fund the grant requests of all the states, OSMRE will distribute the available funds based on need or in the proportion of each state's program activity to the total of all SOAP activity nationwide.
  - 3. If recipients do not receive sufficient funds to support all the mine operator requests, recipients must develop and use a formula to allocate the reduced funds among operators as required by [30 CFR 795.11\(b\)](#).

### **5-130-30 SOAP Grant Performance Period**

- A. SOAP operational grants have a three-year performance period. OSMRE selected the three-year period to allow recipients to start and complete projects within the same grant.
- B. Recipients should not obligate a new project into a grant that does not have sufficient time remaining to complete the project.
- C. OSMRE will not normally extend the three-year grant performance period.

### **5-130-40 Allowable Costs for SOAP Grants**

- A. Costs must be allowable under Office of Management and Budget (OMB) regulations in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. at [2 CFR Part 200](#).
- B. Only some of the services necessary to meet permit requirements are allowable as SOAP costs.
- C. The following services may be allowable if the state regulatory authority (RA) requires them in order to apply for a permit:
  - 1. Determination of the Probable Hydrologic Consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas, including the following:
    - a. Gathering baseline ground water and surface water information.
      - 1. Sample collection, field measurements, and laboratory analyses.
      - 2. Seasonal flow and quality analyses.
      - 3. Inventory of ground water wells and usage and surface water usage in the permit and adjacent areas by contacting local, state, or Federal agencies and a representative portion of local residents or property owners.
      - 4. Field reconnaissance of the site.
    - b. Well drilling for ground water baseline data on a case-by-case basis.
    - c. Engineering analyses and designs necessary to determine the PHC, including those for sediment ponds and diversion ditches, when approved by the awarding office.

- d. Supplemental information if PHC indicates adverse impact to hydrologic balance on or off the proposed site or the presence of acid-forming or toxic-forming material that may result in contamination of surface or ground water supplies.
  2. Preparation of impact estimates regarding the quality and quantity of surface and ground water under seasonal conditions using best professional judgment as accepted by the RA to prepare the following findings:
    - a. Whether adverse impacts may occur to the hydrologic balance.
    - b. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies.
    - c. Whether the proposed operation may result in contamination, diminution, or interruption of an underground or surface source of water in the proposed permit or adjacent area that is used for domestic, agricultural, industrial, or other legitimate purpose. If findings indicate these outcomes are possible, then additional information on water availability and alternate water sources for existing pre-mining and approved post-mining land uses may be collected.
    - d. Impact of the proposed operation on the following:
      1. Sediment yield from the disturbed area.
      2. Acidity, total suspended and dissolved solids, and other important water quality parameters of a local impact.
      3. Flooding or stream flow alteration.
      4. Ground water and surface water availability.
      5. Other characteristics as required for the RA.
  3. Statement of results of test borings or core samplings for overburden geology.
    - a. Geologic description of permit and adjacent area, including the areal and structural geology and other parameters which influence reclamation, and the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground waters. This information shall be based on:
      1. Cross sections, maps, and plans, as described in item c below.
      2. Geologic literature and practices.
      3. Information described in items B2 and C below and any additional information required by the recipient to protect the hydrologic balance or meet the performance standards.
    - b. Overburden drilling, sample collection, and laboratory analyses from the

permit area including either the stratum immediately below the lowest coal seam to be mined or any aquifer below that seam which may be adversely impacted by mining in order to prepare:

1. Logs showing lithologic characteristics including physical properties and thickness of each stratum and location of ground water.
2. Chemical analyses identifying those strata that may contain acid or toxic-forming and alkalinity-producing materials to determine their content, if found necessary by the RA.
3. Chemical analyses of the coal seam for acid or toxic-forming materials including total sulfur and pyritic sulfur, if found necessary by the RA.

The RA may waive all or part of the sampling requirements based on the availability of equivalent information in a satisfactory form.

c. Development of cross sections, maps, and plans showing:

1. Location and elevation of test borings.
2. Locations and elevations of monitoring stations for baseline ground and surface water data, fish, and wildlife and, if required, air quality data.
3. Nature, depth, and thickness of any coal seams to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.
4. All crop lines and strike and dip of coal to be mined within the permit area.
5. Location and extent of known workings of active, inactive, or abandoned underground mines in the permit and adjacent area including mine openings to the surface.
6. Location and extent of subsurface water, if encountered, within proposed permit or adjacent area.
7. Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains and irrigation ditches in the proposed permit and adjacent areas.
8. Location and extent of existing or previously surface-mined areas within the proposed permit area.
9. Location and dimensions of existing areas of spoil, waste, and

non- coal waste disposal, dams, embankments, other impoundments and water treatment and air pollution control facilities within the proposed permit area.

10. Location and depth, if available, of gas and oil wells in the proposed permit area and water wells in the permit and adjacent area.

These maps, plans and cross sections are developed from information already collected under other allowable SOAP services, information provided with the SOAP application, and information collected by the operator to meet regulatory provisions not covered by SOAP. SOAP pays only for the preparation of the maps and cross sections; it does not pay to collect this information except under other allowable SOAP services as discussed above.

4. Collection of archeological and historic information and preparation of related plans sufficient to describe and identify the following:
  - a. The nature of cultural, historic, and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent area.
  - b. Important historic and archeological resources that may be eligible for listing in the National Register by collecting additional information, conducting field investigations or other appropriate analyses as required by the RA.
  - c. Publicly owned parks or any place listed on the National Register that may be adversely impacted. This action may include a plan describing the measures to be used to prevent adverse impacts and minimize adverse impacts where there are valid existing rights or where joint agency approval is required under the coordination provisions of [30 CFR 761.11](#).
5. Pre-blast surveys at the written request of a resident or owner of a dwelling or structure located within 1/2 mile of any part of the permit area.
6. Collection of site-specific fish and wildlife information when such information is necessary to address the respective species or habitats and the permit or adjacent area is likely to include:
  - a. Listed or proposed endangered or threatened species of plants or animals or their critical habitats protected under the Endangered Species Act of 1973, as amended, or similar state statutes.

- b. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction or wintering areas.
  - c. Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.
- 7. Preparation of protection and enhancement plans for fish and wildlife habitat, including plans to minimize disturbances and adverse impacts. Plans must comply with the Endangered Species Act and should include protective, or enhancement measures used during active mining and reclamation.
- 8. Information and plans for any other environmental value required by the RA.

#### **5-130-50 Limitations on Administrative Costs**

- A. Allowable SOAP administration costs are funded in the Regulatory Administration and Enforcement (A&E) grant, except as noted below.
- B. Administrative costs (personnel, travel, supplies, notifications, and indirect costs) charged to the SOAP grant are strictly limited. Recipients may only charge the costs for training and outreach as defined in this section. Recipients must not exceed the maximum spending limits for training and outreach explained below. They must also meet each of the following three conditions:
  - 1. Costs must be necessary and reasonable to meet the objectives of SMCRA.
  - 2. Recipients must specifically identify the costs in their grant application.
  - 3. Document personnel costs with records of specific training, or outreach events. Recipients may not charge them based on a budget estimate or proration.
- C. Training includes services that teach qualified small coal operators how to prepare permit applications and how to comply with the SMCRA Regulatory program.
- D. Outreach includes activities to ensure that qualified small coal operators are aware of the assistance available to them from SOAP.
- E. Costs for training and outreach in a SOAP operational grant must be incidental to project costs. OSMRE limits training and outreach costs to 1% of the total estimated project costs in the grant application or \$2,000, whichever is greater. Supplies, such as educational pamphlets, brochures, posters, etc., may not exceed 5% of the costs allowed

for training and outreach. The following examples illustrate these limits:

Example 1: If recipients have total project costs of \$500,000, training and outreach costs cannot exceed \$5,000, bringing the total grant to \$505,000. Supplies cannot exceed \$250 of the \$5,000 total for training and outreach.

Example 2: If recipients have total project costs of \$100,000, training and outreach cannot exceed \$2,000, bringing the total grant to \$102,000. Supplies cannot exceed \$100 of the \$2,000 total for training and outreach.

- F. Additional technical services specified by state law or regulation and in accord with 30 CFR 795 are allowed.

### **5-130-60 Unallowable Costs for SOAP Grants**

Federal funds appropriated for SOAP, as mandated by the narrow statutory authorization in SMCRA, are linked precisely to baseline information and reports needed to satisfy hydrologic and geologic permitting requirements for an approval of a permit application by that state RA. The following costs are unallowable under the SOAP operational grant:

- A. Recipients may not charge expenses they incur to administer SOAP, except certain training, and outreach activities as described above. They must fund SOAP administrative costs out of their Regulatory A&E grant.
- B. Exploratory test drilling, core drilling, or observation well drilling to define the extent of coal or for sampling overburden materials.
- C. Recipients may not charge costs of collecting data from local or regional sites before they receive applications for assistance.
- D. Interest penalties associated with late payments for contractual work with laboratories.

### **5-130-70 SOAP Recipients That No Longer Qualify**

Operators may become ineligible for SOAP funds after recipients provide assistance, if they subsequently exceed the SOAP tonnage limit for small operators. They may also become ineligible if they fail to apply for a permit within one year or if they fail to mine after obtaining a permit. Recipients must recover Federal funds which they spent for operators who are no longer qualified to receive SOAP assistance. The liability period for recovering these funds is the term of the surface mining permit for which a recipient provided assistance, or five years after the permit was issued, whichever is less.

### **5-130-80 Reimbursing SOAP Funds**

Reimbursements are funds recipients previously expended from a SOAP operational grant which they recover. Recipients must identify and collect funds previously expended for an operator if the operator subsequently exceeds the tonnage limit which makes them eligible for SOAP assistance. OSMRE defines SOAP reimbursements as program income which recipients may spend using the



addition option. This authorizes recipients to add all reimbursements they collect to the funds awarded in an open SOAP grant and to expend them for the purposes of the SOAP.

## **CHAPTER 5-200**

### **THE APPLICATION PROCESS FOR A REGULATORY GRANT**

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5-200-20 Applying for a Regulatory Grant

5-200-30 Reporting and Accounting for the Costs of Regulatory Functions

5-200-40 Grant Application Package

#### **5-200-00 Purpose**

The purpose of this chapter is to describe how a state or tribe with an approved coal Regulatory program can apply to the Office of Surface Mining Reclamation and Enforcement (OSMRE) for a Regulatory program Administration & Enforcement or Program Development grant.

#### **5-200-10 Regulatory Grant Performance Period**

The application should request a 12-month performance period for a Regulatory grant.

#### **5-200-20 Applying for a Regulatory Grant**

The applicant must submit a complete grant application. They must enter the application in an OSMRE-approved electronic grants portal, such as GrantSolutions or the current system. Applicant should submit their application at least 60 days before the beginning of the grant performance period.

#### **5-200-30 Reporting and Accounting for the Costs of Regulatory Functions**

- A. Before the applicant completes their application, they must choose how they will identify the regulatory functions for accounting and reporting purposes. OSMRE have identified the following major regulatory functions or activities:
1. Permitting includes the costs of reviewing new permit applications and modifying existing permits. It also includes costs of determining and approving a bond amount and reviewing ownership and control.
  2. Inspection and Enforcement includes costs of mine inspections for compliance with state performance standards and of all activities to enforce compliance. It also includes bond release costs and legal costs related to inspection and enforcement activities.
  3. Lands Unsuitable includes costs to evaluate and decide petitions about designating lands unsuitable for coal mining.
  4. Regulatory program administrative activities and costs to support the above

functions include costs for executive direction and standard administrative support functions, such as personnel, accounting, and procurement.

- B. For Program Development an analysis and evaluation of the current State laws and changes required therein to conform to the requirements of the Surface Mining Control and Reclamation Act of 1977, unless previously submitted under part 725. A description of the changes expected to be required in State regulations, organization, staffing, training, and other policies and operations in order to develop a State program which can be approved. A program to develop the legislation, regulations, procedures, organization, staffing, training materials, and other program elements necessary to obtain program approval ([30 CFR 735.18](#)).
- C. Applicants must choose one of the following options to identify the costs of these functions:
  - 1. Option 1. Break out the functions in the applicant's reporting and accounting. They must break out the line item and total costs of each function in their application. Applicants must support the functional costs with detailed accounting records.
  - 2. Option 2. Show only the total budget figures in grant application budget. In the program narrative, applicant must describe the methodology they will use to distribute the total budgeted costs to the functions either as a percentage of the total or as dollar amount. This methodology must meet the requirements of the state comptroller or comparable organization as required by state law. Supporting documentation for methodology will be needed.

### **5-200-40 Grant Application Package**

The application must include the following items:

- A. Signed or approved Application for Federal Assistance, form [SF 424](#).
- B. Budget information report. Applicant may use the optional [OSMRE 47](#) form or provide the information in an alternate format of their choice.
  - 1. Break out the budget by object class. Object classes are the budget line items, including personnel, fringe benefits, travel, equipment, supplies, contractual expenses, construction, other, and indirect costs.
  - 2. If applicant chooses to account separately for regulatory functions or activities, including permitting, inspection and enforcement, lands unsuitable, and administrative costs, break out the budget for each object class and for the total grant by function.
  - 3. Identify the total Federal and non-Federal funds the program will spend. Show the overall percentage of non-Federal support.

4. Estimate the program income that the applicant might spend during this grant.
  5. Show the total estimated indirect costs. Show how the estimate is calculated using the indirect cost rate or CAP and the direct cost base which have been approved by their cognizant Federal agency.
- C. Budget narrative. Applicant may provide this information in any format to explain and justify the requested budget.
1. Personnel. List all the positions by title, with annual salary rate and percentage of time working on the grant. Position title, salary, percentage of time working on the grant, and functions to be performed.
  2. Fringe Benefits. Explain how the fringe benefits were calculated.
  3. Travel. List the types of trips and show how the estimated cost was calculated.
  4. Equipment. List each item of equipment to be purchased and justify why the equipment is needed for the regulatory program.
  5. Supplies. Enter estimated dollar amount of supplies. List the supplies by major type (e.g., office supplies, training materials, research forms, postage), and show basis for computation.
  6. Contractual. List each proposed contract, the contractor if identified, the type of services to be performed, the need for the services, and the estimated cost.
  7. Construction. Describe any proposed construction or renovation, why it is necessary for the program, and the estimated cost.
  8. Other. List any other cost items not reimbursed as an indirect cost, such as rent, utilities, or janitorial and security services, and show how the cost was calculated.
  9. Indirect Costs. Include a copy of the current indirect cost agreement approved by the cognizant Federal agency.
  10. Program Income. Include a statement whether the applicant plans to earn or spend program income during the life of the grant.
  11. If the applicant chooses not to break out the budget by regulatory program function, such as permitting or inspection and enforcement, the applicant must explain their method for distributing total costs to the functions. Applicants may use a percentage, total dollar figure, or some other acceptable method.
- D. Program narrative. Applicant may use the optional [OSMRE 51](#) form or provide the

information in any other format. These requirements come from [2 CFR Part 200](#).

1. Objectives and Need for Assistance. Using the approved regulatory program, describe problems related to coal mining and reclamation (physical, economic, social, financial, or institutional) requiring a solution. Explain why the assistance is needed and state the primary and secondary objectives of the grant.
  2. Results and Benefits Expected. Identify results and benefits of the regulatory program. For example, explain how the program will improve life for coalfield citizens.
  3. Approach. Outline a plan of action explaining the scope of the program and how the proposed work will be accomplished. Explain the reasons for taking this approach as opposed to others. Describe any unusual features of this grant. Identify the kinds of data that will be collected. Discuss the criteria and methodology that will be used to evaluate the results and success of this program.
  4. Geographic Location. No information required.
  5. If they chose not to break out the budget by regulatory program function, such as permitting or inspection and enforcement, the applicant must explain their method for distributing total costs to the functions. Applicants may use a percentage, a total dollar figure, or some other acceptable method.
- E. Signed or approved Assurances for Non-Construction Projects, form [SF 424B](#).
- F. If applicable, the Disclosure of Lobbying Activities from SF-LLL or Certification Regarding Lobbying. See lobbying Chapter 2-130.

## **CHAPTER 5-210**

### **APPLICATION REVIEW AND PROCESSING FOR A REGULATORY GRANT**

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- 5-210-20 Application Review
- 5-210-30 Grant Award Processing
- 5-210-40 Review and Award Documentation

#### **5-210-00 Purpose**

The purpose of this chapter is to explain the procedures used by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to receive, review, and process an application for regulatory assistance. These procedures apply to all Regulatory program grant and cooperative agreement applications.

#### **5-210-20 Application Review**

OSMRE will process complete regulatory grant applications within 60 calendar days of receipt. Regulatory grant applications will be processed within 60 days after the awarding office has determined that OSMRE has received a complete grant package that meets the requirements for review. The 60 days review clock starts when the complete regulatory package is received and verified ready for review, not on the date the initial application is submitted.

The awarding office must take the following actions. The review may draw upon OSMRE programmatic, technical, and financial staff as necessary during the review process:

- A. Determine that the application is administratively complete. See Chapter 5-200 of this manual for the requirements for a complete application.
- B. Confirm that the requested funds are available.
- C. Make the following programmatic and financial determinations.
  - 1. The project objectives support an approved regulatory program.
  - 2. The proposed activities are appropriate to accomplish the specific program objectives.
  - 3. The proposed cost of the grant reflects the amount of work needed to accomplish the objectives. This review should consider prior costs for similar program expenditures by the applicant's program or similar programs.

4. The proposed cost items and amounts are necessary and reasonable:
    - a. Costs must be eligible under Office of Management and Budget (OMB), [2 CFR 200 Subpart E](#), and OSMRE regulations.
    - b. These costs must be essential to accomplish program objectives.
    - c. Be reasonable for this particular grant. Factors to consider for reasonableness may include fair market price and regional differences in cost.
    - d. Determine all costs are reasonable, necessary, allowable, and allocable.
  5. The costs items discussed here include general questions OSMRE will consider. However, the awarding office may consider additional questions for a particular application or cost. It is important not to just look at each item as a completely separate entity, but rather to see how each item contributes to the successful operation of the program. The reviewer must use sound judgment to determine the level and type of analysis that is appropriate for the type of work and amount of funding being proposed.
- E. For state regulatory Program Development and Administration & Enforcement (A&E) grants which require that some program costs be met with non-Federal funds, the awarding office will confirm that the applicant will meet the cost share requirement.
1. The proposed amount of non-Federal funds must meet the state's required share of the proposed program cost.
  2. A responsible state official must certify that the proposed non-Federal matching funds are available for expenditure by the applicant's program during this performance period.
  3. If the amount certified as available is not adequate, or if OSMRE is concerned that the amount certified may not be available, the awarding office will ask the applicant for a specific description of the source of the proposed funds and when the funds will be available.
- F. Complete all pre-award risk assessments, SAM checks, and other pre-award requirements required by law.

### **5-210-30 Grant Award Processing**

- A. The awarding office will decide to approve or disapprove the application based on its review. If the awarding office approves the application, they will award a regulatory agreement. If they disapprove it, the awarding office will send the applicant the reasons

or recommendations for disapproving.

- B. OSMRE must enter and approve the award in the electronic grant system. OSMRE's accounting system will then update Treasury's grant payment system to make the funds available for the applicant to request a drawdown.
- C. OSMRE will send the approved award document electronically. The Notice of Award will be available in OSMRE's electronic system of record and available for download after the release of the award.

#### **5-210-40 Review and Award Documentation**

OSMRE documents every programmatic and financial finding and recommendation. The following information must be available in the official grant file kept by the awarding office. OSMRE must include any additional supporting information as appropriate for the application, the recipient, the regulatory program, and the awarding office:

- A. The application as originally received all subsequent revisions to it and any other information sent.
- B. Records of all meetings and telephonic conversations with the applicant.
- C. Correspondence with the applicant.
- D. Internal reviews of the application.
- E. Questions raised and resolved during the review process.
- F. Records about the timing of the award process, incomplete documentation, availability of funds, etc.



**CHAPTER 5-220**  
**AMENDMENTS AND POST-AWARD CHANGES FOR A REGULATORY GRANT**

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**5-220-00 Purpose**

The purpose of this chapter is to explain the requirements when recipients need to make programmatic or budget changes to their regulatory assistance agreement. It describes which changes require prior approval, how to request approval, and how it will be processed. This information applies to all regulatory program grants and cooperative agreements awarded by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

**5-220-10 Policy**

The requirements for prior approvals for changes to assistance agreements are established in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, [2 CFR Part 200 Subpart D](#).

**5-220-20 Change Requests to the Grant**

- A. If the requested change requires OSMRE written approval, the recipient must request the change and receive prior approval before implementing the change or obligate any funds. If the recipient incur costs before the change is approved, they take the risk that the cost may be unallowable.
- B. OSMRE will not approve a request for a change, including time extensions or additional funding, which is received after the scheduled expiration date of the assistance agreement. The only exception is if there are unforeseen circumstances not under a recipient's direct control. Recipient must justify the extenuating circumstances to the satisfaction of the authorized awarding official.
- C. Recipient should send a request to extend the performance period at least 30 days before the date it is scheduled to end for a no cost extension. The awarding office will approve only one extension of the normal performance period for not more than one year, unless recipient adequately justifies special or unusual circumstances to the authorized OSMRE official.

**6-220-30 Changes that Requires an Amendment**

The following changes require a formal amendment to the approved agreement:

- A. Notice of Award Revision.
- B. Change in Key Personnel (PI/PD).
- C. Extending or shortening the performance period.
- D. Adding more funds.
- E. De-obligating surplus funds before the end of the performance period.
- F. Transferring any funds between construction and non-construction if the agreement has both construction and non-construction activities.
- G. Changes, greater than 10% of the entire award to the approved budgetary plan.
- H. Changes to programmatic plan approved in the initial award application.

#### **5-220-40 Grant Amendment**

- A. An amendment may be initiated by either the recipient or OSMRE. However, both parties must agree with the amendment terms.
- B. Recipient should submit amendment application in current electronic grant system, such as GrantSolutions, but may e-mail application if there are problems. The amendment application must include the following items:
  - 1. Signed or approved form [SF 424](#), indicating in item 8 the type of change being requested.
  - 2. A program narrative explaining and justifying the requested change. Recipient may use the optional [OSMRE 51](#) form, include the explanation in the transmittal letter, or use another format of their choice.
  - 3. If requesting a budget change, provide revised budget information. Recipient may use the optional [OSMRE 47](#) form or another format of their choice.
- C. The awarding office will process amendments in the same way as new agreements (FFAM Ch. 5-210). OSMRE will approve or disapprove the amendment request within 60 days of receiving a complete amendment package. The awarding office will notify the Office of Communications for Congressional and public announcement only when the amendment will increase previously un-allocated funding by more than \$100,000.
- D. The amendment takes effect when approved by the authorized OSMRE official and applies to the entire agreement period unless otherwise stated. The awarding office will

notify the recipient when the amendment action has been approved in the current electronic grant system and will send the appropriate documentation to the recipient.

### **5-220-50 Changes that Require Prior Approval**

- A. Some changes to the approved agreement require OSMRE prior approval, but do not require a formal amendment. The following changes are considered revisions to an approved agreement and must be requested and approved in writing:
  - 1. A change in the scope of the program requires formal written approval even if there is no other change in the agreement or budget. A scope change is any change in the objectives of the program or the work to be performed that is outside the plans approved in the original grant and that has the potential to affect the success of the program. For example, contracting out permitting or inspection and enforcement functions would be a scope change.
  - 2. If OSMRE funding is over \$100,000, recipient must request approval before or when they transfer a cumulative total of more than 10% of the total budget between direct cost categories.
  - 3. Office of Management and Budget (OMB) Cost Principles ([2 CFR 200](#)) says that some cost items are allowable only if OSMRE approves them in advance. Equipment is one of these cost items. If recipient needs to incur such costs and the awarding office did not approve them when the original application was approved, then the recipient must request approval.
- B. To request approval, submit a letter requesting the change to the current electronic grants system or by e-mail to the awarding office as soon the need is determined. Recipient's request must explain and justify the proposed change. If the proposal changes the budget, the request must identify these changes.
- C. Our awarding office in 30 days will notify the requestor of receipt and for clarification and/or additional information of the request under consideration. OSMRE will communicate the determination of the request by electronic mail (e-mail) or an amended Notice of Award/NOA (whichever is applicable). If the request remains under consideration after 30 days, the awarding office will contact the requestor and provide an update on the extended determination period.

### **5-220-60 Changes that Do Not Require Prior Approval**

- A. Principles in [2 CFR Part 200](#) describe the changes which require prior agency approval. OSMRE may not require prior approvals for any other change.
- B. Programmatic changes other than major scope changes, such as reorganizations, changes in office locations, or new administrative or accounting systems do not require a formal amendment. However, the awarding office should be notified of these changes.
- C. Please see [2 CFR 200.308](#) for information on budget transfers less than 10% of the total budget as last approved by the Federal awarding agency.

## CHAPTER 5-230

### PERFORMANCE AND FINANCIAL REPORTING FOR A REGULATORY GRANT

#### **Table of Contents**

- 5-230-00 Purpose
- 5-230-10 Policy
- 5-230-20 Report Submission
- 5-230-30 Required Information for Reporting
- 5-230-40 Report Review

#### **5-230-00 Purpose**

The purpose of this chapter is to describe the required reports from a state or tribe that received a regulatory assistance agreement from the Office of Surface Mining Reclamation and Enforcement (OSMRE). It describes when reports are due, how to submit them, and what information to report. This information applies to grants and cooperative agreements awarded under the coal regulatory program.

#### **5-230-10 Policy**

The requirements for performance and financial reports are established in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).

#### **5-230-20 Report Submission**

- A. Recipient must submit performance and financial reports to OSMRE's electronic grants system, such as Grant Solutions or current system, annually. Since the performance period of a regulatory grant is twelve months, the final report is the only report required if the 120-day due date requirement is met. The reporting period is the same as the grant's performance period. Recipient will find further guidance on regulatory grant close outs in chapter 5-240 of this manual.
- B. If the performance period is longer than 12 months, or if the awarding office extended the due date of the final report, recipient must submit interim performance and financial reports 90 days after the end of the first 12 months of the performance period. In addition, recipient must submit a final performance and financial report 120 days after the end of the grant performance period or at the end of the extended reporting period.
- C. If recipient cannot meet a due date for a required report, contact the awarding office before the report is due. They may be able to extend the due date based on the justification.

## **5-230-30 Required Information for Reporting**

### **A. Performance Progress Report.**

1. Recipient may use the optional [OSMRE 51](#) form, or any narrative format for the performance report.
2. Reports must compare actual accomplishments to the goals established for the period. If established goals were not met, the reasons must be explained in the report.
3. If a recipient can identify the output of a project or activity and can quantify it, they must report quantitative data and calculate unit costs.

### **B. Financial Report.**

1. Recipient must use the [SF 425](#) Federal Financial Report.
2. Include or attach any other appropriate information or explanation, such as analysis and explanation of cost differentials or high unit costs in the report. Reporting on a cash basis is allowable and required.
3. Recipient must use the SF-428 to report any equipment acquired with grant funds.

### **C. 230-40 Report Review**

A. The awarding office will review the recipient's programmatic and financial reports. The awarding office will determine if the recipient has met the reporting requirements and provided all the information needed. OSMRE will verify if the recipient has complied with the following basic requirements:

1. An official authorized to act for the recipient's organization must have signed or approved the report.
2. OSMRE must receive reports by the established due date.
3. All reported activities and claimed costs must be in compliance with the approved regulatory plan, assistance application, and Federal regulations.
4. Performance reports must compare the planned and actual accomplishments of the regulatory program.
5. Financial reports must be mathematically accurate and consistent with OSMRE's financial and drawdown records.

6. All claimed costs must be supported by recipient's accounting records and must be able to reconcile them.
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- B. If any concerns are identified, the awarding office will work with the recipient to correct the report.
  - C. The awarding office will prepare a monitoring statement documenting the review.

## CHAPTER 5-240 CLOSING A REGULATORY GRANT

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- 5-240-10 Policy
- 5-240-20 Regulatory Grant Closeout
- 5-240-30 Closeout Package Deadline
- 5-240-40 Report Submission
- 5-240-50 Required Information for Closeout
- 5-240-60 Closeout Review

### **5-240-00 Purpose**

The purpose of this chapter is to describe how a state or tribal recipient of a regulatory assistance agreement and the Office of Surface Mining Reclamation and Enforcement (OSMRE) close a regulatory grant.

### **5-240-10 Policy**

The requirements for closeout procedures come from the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at [2 CFR Part 200 Subpart D](#).

### **5-240-20 Regulatory Grant Closeout**

- A. OSMRE will normally close out regulatory agreements no later than 210 calendar days after the end of the performance period. The first 120 days allows the recipient to submit final reports. The remaining 90 days allows the awarding office to complete the closeout process.
- B. Regulatory agreements can be closed without an audit. However, OSMRE may take additional administrative action after closeout if a subsequent audit identifies any findings or questioned costs.
- C. An agreement will not be closed until all funds have been de-obligated through an amendment. OSMRE encourages states and tribes to submit all de-obligation requests as soon as practical.
- D. OSMRE will not close out an agreement if it is in litigation or under appeal.
- E. If an agreement was terminated by the awarding office, then the award will not be closed until all termination actions have been completed.

### **5-240-30 Closeout Package Deadline**

- A. The complete closeout package is due to OSMRE 120 days after the end of the performance period of the agreement.

- B. If recipient has made every reasonable effort to send a complete closeout package within 120 days but cannot meet the due date, they may request an extension. Recipient must send a written request with a justification explaining why the extension is needed. Recipient must submit interim performance and financial reports to the awarding office following the requirements in chapter 5-230 of this manual.

#### **5-240-40 Report Submission**

Recipients must submit reports to OSMRE's electronic grants system, such as Grant Solutions or current system. The forms must include the name and title of the authorized official who signed them, the date signed, and recipient's must maintain the original signed forms in their files.

#### **5-240-50 Required Information for Closeout**

A complete closeout package for a regulatory agreement includes the following information:

- A. Final Federal Financial Report ([SF-425](#)). See chapter 5-230 for more information on the financial report.
  - 1. Report all program income in accordance with the cost sharing option, using program income to meet the required non-Federal match. Recipient may use excess program income by the addition option, increasing the budget for their regulatory program. See chapter 2-220 of this manual for more information on program income.
  - 2. Recipient may not show any unliquidated Federal obligations on the final report. All obligations must be paid before the grant can be closed.
- B. Final performance program report. See chapter 5-230 of this manual for information on the program narrative report.
- C. Report of government property if acquired or held property under this grant. Report property on the Tangible Personal Property Report ([SF-428](#)) that allows for any other inventory format acceptable to the awarding office. Recipient's inventory must list all equipment or real property acquired under this grant or transferred into this grant from previous regulatory grants. Recipient must notify the awarding office whether they transferred the property to the subsequent regulatory grant or disposed of the property.
- D. Report of Federally owned property if any is held. Recipient must provide a separate list of all Federally owned property provided for use under this grant. Use the Tangible Personal Property Report ([SF-428](#)) that allows for any other acceptable property list. Recipient must request that the property be transferred to a subsequent grant or properly disposed (see 2-200-50 of this manual for disposition information).



## **5-240-60 Closeout Review**

The awarding office will review the closeout package and determine if it is complete and acceptable. If the closeout package is not acceptable, OSMRE may return it to the recipient with an explanation of what is needed to complete or correct it, ask for additional information, or take other actions to resolve the problems. After an acceptable closeout package is received, the awarding office must complete the following actions:

- A. Process the final grant action to de-obligate any unexpended funds.
- B. Review the closeout package and the grant.
  - 1. Verify that all known changes to the grant by appropriate revisions or amendments have been added.
  - 2. Resolve any grant suspensions, withholding of funds, disputes, and violations of grant clauses and assurances with the recipient.
  - 3. Write a brief evaluation of the recipient's performance under the grant and keep it in the official grant file.
  - 4. Reconcile the inventory of Federally owned property to OSMRE records and approve the transfer to a subsequent agreement.
  - 5. Verify that the grant and the file are complete. A checklist will be used to document this step.
  - 6. Notify the recipient that the award is closed.

# **Annex I: FFAM Part 6 – Cooperative Agreement Programs**

## **CHAPTER 6-100**

### **WATERSHED COOPERATIVE AGREEMENT PROGRAM**

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- 6-100-30 Award Requirements
- 6-100-40 Application Requirements
- 6-100-50 Allowable Costs
- 6-100-60 Review and Selection Process
- 6-100-70 Amending a WCAP
- 6-100-80 Reporting Requirements for a WCAP
- 6-100-90 WCAP Closeout
- 6-100-95 Federal Records Retention Requirements

#### **6-100-10 Purpose**

The purpose of this chapter is to provide the guidance on the Watershed Cooperative Agreement Program (WCAP) awarded by the Office of Surface Mining Reclamation and Enforcement (OSRME). This chapter includes, how to find a Notice of Funding Opportunity (NOFO), submit an application, OSMRE's review and selection process, and post-award requirements.

#### **6-100-15 Objectives**

Lands and water eligible for reclamation or drainage abatement under Section 404 of Public Law 95-87 (the Act), Stat. 445-532 as amended, are those which were mined for coal or which were affected by mining, waste banks, coal processing, or other coal mining processes prior to August 3, 1977, and left in an unclaimed or inadequately reclaimed condition, for which there is no continuing reclamation responsibility under state or other Federal laws.

OSMRE's WCAP supports local watershed restoration efforts by providing federal assistance funding to nonprofit organizations that undertake acid mine drainage (AMD) reclamation projects to improve water quality and help restore local streams health to a level that will support a diverse ecosystem and provide recreational opportunities for the community.

WCAP awards are selected through a competitive merit review process to fund the installation of passive or active water treatment systems, including repairs and renovations, as well as the reclamation of lands that contribute sediment or acid forming materials to streams. OSMRE encourages WCAP awards to create partnerships that encourage long-term commitment to projects through engagement with local communities

and environmental conservation groups.

### **6-100-20 Eligibility**

To be eligible for OSMRE WCAP funding, an organization must be a nonprofit organization, other than an institution of higher education, that is tax exempt under 26 U.S.C. 501(c)(3) of the Internal Revenue Code. Additionally, any organization selected for funding must register in SAM.gov prior to receiving funding and register in the government system of record for payments (ASAP, etc.).

### **6-100-25 How to Apply**

OSMRE will post the WCAP Notice of Funding Opportunity under CFDA 15.253 Not-for-Profit AMD Reclamation at grants.gov. Applicants must apply through the available NOFO during the designated open dates.

### **6-100-30 Award Requirements**

OSMRE funding for a WCAP project does not typically<sup>6</sup> exceed \$100,000. However, OSMRE will consider projects that require over \$100,000 with adequate justification. WCAP projects must use technologies and designs that have a high likelihood of success without the need for frequent and expensive system renovations. Additionally, WCAP applicants must secure site access and approval to use the property through a written agreement prior to applying for WCAP funding.

OSMRE encourages applicants to have broad-based support for the project, including other partners contributing funds or services. However, partner contributions are not required. OSMRE expects the project to be part of a comprehensive watershed restoration plan, where other partners have a substantial investment of time and funding in the plan. If other funding is supporting the project, those funds must be secured prior to applying for WCAP funding.

### **6-100-40 Application Requirements**

Applications for WCAP funding must include the following information/forms:

- A. SF-424, Application for Federal Assistance
- B. SF-424A, Budget Information
- C. SF-424B, Assurances
- D. Project Abstract
- E. Indirect Cost Agreement

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<sup>6</sup> Total authorized funding amounts are subject to change due to revisions/updates in law, regulations, directives, or other policy decisions

- a. If indirect costs are included in the project budget, the applicant must submit a copy of the approved negotiated agreement negotiated with the cognizant federal agency. Alternatively, applicants that do not have a negotiated indirect cost rate may elect to charge indirect to an award pursuant to a de minimis rate of up to 15 percent of modified total direct cost. Applicants proposing up to a 15 percent de minimis rate should note their election as part of the budget narrative portion of the application.

F. Certification Regarding Lobbying or SF-LLL Disclosure

G. Project/Performance Site Location(s)

H. Key Contacts Form

I. Program Narrative

The applicant must explain the need for the project in a program narrative, including the project purpose, goals, and objectives. The program narrative must include information on treatment goals, expectations for chemical and biological impacts of the project on the receiving stream, and how the project fits into the restoration goals for the watershed. Additional items to be included in the program narrative section of an application are:

1. Statement of legal right of entry to the property for construction and continuing monitoring and maintenance.
2. Information on permits required for the project.
3. Information on the technology and project design, including material quantities, if available.
4. Long term discharge water quality measurements (12 months or more), such as flow, pH, acidity, total and ferrous iron, and aluminum.
5. Information on continued monitoring provisions for the discharge, treatment outflow, and receiving stream (both up and downstream).
6. U.S. Geological Survey topographical map of the project area, with latitude and longitude.
7. Project schedule, including major activities performed throughout the cooperative agreement period of performance.
8. Contractor or subcontractor information, if known.

## J. Budget Narrative

- a. The budget narrative must clearly identify and detail all project costs, including contractors and in-kind contributions, broken down by the cost classifications noted on the SF-424A. For each cost item that federal funds are requested, the budget narrative must justify the necessity and basis for each cost item and project activity. For all personnel, the budget narrative should, at minimum, include the following: name; job title; description of the individual's role on the proposed project and work to be performed; salary rate; time, effort, and direct charges to the proposed project.

## K. 501 c(3) designation – IRS Non-Profit Status

If not subject to single audit, the recipient will need to complete a Financial Capabilities Questionnaire Form.

Additional information on what must be contained on each of the above items will be included in the instructions for each standard form or in the Notice of Funding Opportunity posted on grants.gov.

## **6-100-50 Allowable Costs**

WCAP applicants are responsible for ensuring that proposed project costs are allowable, allocable, and reasonable; in accordance with 2 CFR 200. The following costs may be allowable for a WCAP project:

1. Administrative costs directly associated with the project, such as financial and program administration of the cooperative agreement, preparing reports, traveling to the project site for monitoring purposes, and supply and laboratory costs for water quality sampling.
2. Construction costs directly associated with the approved project.
3. Final design or design modifications associated with the project.
4. Pre- and post-construction water monitoring of the project.
5. Contract inspection and administration.
6. Land purchases as outlined in FFAM 2-200-120.

The following costs are not allowable under a WCAP project:

1. Designs only for initial or stand-alone projects. Must include construction of the project as well as listed in paragraphs 2 or 3 above.
2. Overhead unrelated to the project.

3. Liability insurance.
4. Public relations activities or materials.
5. Project ground breakings or dedications.
6. Payments to an organization or individual that owes the federal government money or is in violation of federal regulations.

OSMRE requires WCAP recipients to maintain financial data to safeguard and provide accountability of federal funds. In accordance with 2 CFR 200, WCAP recipients must have internal controls and written procedures for purchases, accounting systems, cash management, and organizational structure.

For example, WCAP recipients must provide accurate, current, and complete financial information about federal awards and subawards and maintain records that adequately identify the sources of funds for federally assisted activities, including authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and any program income.

Accounting records must be supported by source documentation, such as canceled checks, paid bills, payrolls, and time and attendance records. WCAP recipients must maintain effective control over and accountability for all cash, real and personal property, and other assets under the award; adequately safeguard those assets; and ensure that they are used only for authorized purposes.

### **6-100-60 Review and Selection Process**

OSMRE will form a Merit Review Panel to evaluate each application based on the evaluation criteria noted in the NOFO. OSMRE may select some, all, or none of the applications submitted under any given NOFO.

The Merit Review Panel will compile and recommend applications for award based upon the relative ordering ranking of the applications. The Field Office Director may approve funding based on the recommendation; however, applications may be selected for funding out of rank order based on the availability of federal funds and the alignment of proposed projects with program priorities.

### **6-100-70 Amending a WCAP**

After WCAP award, OSMRE will process any change necessary to the agreement through an amendment. If there is a change in scope or additional time is needed to complete the WCAP project, the recipient must submit an amendment request, including an SF-424, Application for Federal Assistance, and justification for the change, to OSMRE's current grants system or to the awarding office, asking to extend the period of performance end date.

If additional funding is needed, a recipient must apply for the additional funding through an open WCAP Notice of Funding Opportunity. If a problem develops with a WCAP project after it has been completed and the cooperative agreement has been closed, a recipient can submit a new WCAP application to cover the

problem through an open WCAP Notice of Funding Opportunity.

### **6-100-80 Reporting Requirements for a WCAP**

Reporting requirements will be established in writing in the Notice of Grant Award provided to the recipient after OSMRE has awarded a WCAP. While OSMRE may have provided funding for only a portion of the approved project, performance and financial reporting should include all parts of the project.

OSMRE requires WCAP recipients to submit the Federal Financial Report on the SF-425. Both federal and non-Federal funding towards the project must be included on the SF-425, including the dollar value of in-kind contributions. All costs must be allowable and part of the approved project.

For the Performance Progress Report, WCAP recipients may use any format to convey required information to OSMRE. A WCAP recipient must include the following information in their performance report:

1. Award number.
2. Brief overview of the project.
3. Activity description listing the tasks that the recipient has initiated or accomplished during the reporting period.
4. Plans for the next reporting period, including tasks the recipient plans to initiate, etc.
5. Unresolved issues.
6. Partnership information.

### **6-100-90 WCAP Closeout**

To close a WCAP award, OSMRE requires the recipient to submit final performance and financial reports (SF-425) within 120 days after the period of performance end date as indicated on the Notice of Award. OSMRE will not close out the award until all funds have been de-obligated. The information included in the final reports may include any/all the following:

1. Project accomplishments.
2. "As built" treatment system plan.
3. Quantities of materials used.

4. Performance information after system is operational, regarding influent (untreated) and effluent (treated) water flow and chemistry, including date of collection, pH, irons, acidity, and aluminum.
5. Problems or delays encountered, including resolution.
6. Explanations regarding project partners.
7. In-Kind Contributions of Services or Materials, including monetary value calculation.

### **6-100-95 Federal Records Retention Requirements**

Please see [2 CFR 200.334](#) for retention requirements for records. Additional information can be found in [2 CFR 200 Subpart D](#), Post Federal Award Requirements, Record Retention and Access.



## **CHAPTER 6-110**

### **APPLIED SCIENCE COOPERATIVE AGREEMENT PROGRAM**

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6-110-70 Amending an Applied Science Award
6-110-80 Reporting Requirements for Applied Science
6-110-90 Applied Science Closeout
6-110-95 Federal Records Retention Requirements

#### **6-110-10 Purpose**

The purpose of this chapter is to provide guidance on the Applied Science program with the Office of Surface Mining Reclamation and Enforcement (OSMRE). The instructions in this chapter will help to find an opportunity, prepare and submit a proposal, the review and selection processes, and requirements for managing an Applied Science agreement, if awarded.

#### **6-110-15 Objectives**

The Objectives of the Applied Science Program at OSMRE is to further the science of reclaiming abandoned mine lands and protecting the environment.

The Applied Science Program funds the development of new reclamation science and technology. The program selects and funds applied science proposals that improves public and environmental health protection. The science and technology advanced by these projects serves the public through activities that:

1. Protect identified endangered species.
2. Improve reforestation and revegetation.
3. Protect prime farmland.
4. Improve technologies to mitigate acid mine drainage.
5. Improve methods for locating underground mines.
6. Enhance the protection of the public and environment associated with surface coal mining.

#### **6-110-20 Eligibility**

Public, private, or non-profit entities are eligible. Recipients can be a Federal, state, local, or tribal government entity, a college or university, or other qualified entity as described in the Notice of Funding Opportunity

(NOFO).

### **6-110-25 How to Apply**

Unless otherwise directed in the NOFO, institutions who meet the criteria on the announcement may apply at [grants.gov](https://www.grants.gov).

### **6-110-30 Proposal Requirements**

Applicant's proposal must address coal mining in one of OSMRE's three regions, serve the public as described in this chapter and include a statement addressing the proposals value associated with coal mining reclamation or regulation. The proposal must not propose quality control or consumer evaluations for commercial products, include fees or profit, or include federal employee salary or compensation of any kind.

Must address one of the topics addressed in the NOFO. Certain award specific requirements may be addressed in the NOFO. Please ensure these requirements are met in addition to the provisions above.

In addition to these requirements, the proposal must have a completed application kit for the funding opportunity. A completed application kit will include these items and any additional documents required in the NOFO or future directives. OSMRE encourages applicants to review the NOFO for detailed information for each required document.

- a. SF-424, Application for Federal Assistance
- b. Project Narrative
- c. Statement of Work
- d. SF-424A, Budget Information for Non-Construction Programs
- e. Detailed Budget Narrative
- f. Indirect Cost Rate Agreement or Cost Allocation Plan (CAP) Agreement, if applicable
- g. Conflict of Interest Statement
- h. Single Audit Reporting Statement
- i. Certification Regarding Lobbying or Disclosure of Lobbying Activities
- j. Overlap or Duplication of Effort Statement

### **6-110-40 Allowable Costs**

Costs must be allowable under the Office of Management and Budget's cost principles. See the applicable section in the Code of Federal Regulations (CFR), Title 2 Part 200, for more information.

### **6-110-50 Review and Selection**

As described in [2 CFR 200.204](https://www.ecfr.gov/current/title-2/chapter-200/subchapter-2/part-200.204), application review information including the criteria and process to be used to evaluate applications must be included in the Notice of Funding Opportunity by the Federal awarding agency. Please see the NOFO for full details of the review and selection process in addition to the information below.

Prior to award, the program will review any applicant statement regarding potential overlap or duplication between the project to be funded and any other funded or proposed project in terms of activities, funding, or time commitment of key personnel. Depending on the circumstances, the program may request modification to

the application, other pending applications, or an active award, as needed to eliminate any duplication of effort, or OSMRE may choose not to fund the selected project.

The program may not make a federal award to an applicant that has not completed the SAM.gov registration. If an applicant selected for funding has not completed their SAM.gov registration by the time OSMRE is ready to make an award, the program may determine that the applicant is not qualified to receive an award. The program can use that determination as a basis for making an award to another applicant. Prior to award, the program will evaluate the risk posed by applicants as required in 2 CFR 200.206. Programs document applicant risk evaluations using a Risk Assessment form.

Prior to approving awards for Federal funding in excess of the simplified acquisition threshold (currently \$250,000), the Bureau is required to review and consider any information about or from the applicant found in the Federal Awardee Performance and Integrity Information System. OSMRE will consider this information when completing the risk review. The awarding office uses the results of the risk evaluation to establish monitoring plans, recipient reporting frequency requirements, and to determine if one or more of the specific award conditions in 2 CFR 200.208 should be applied to the award.

### **6-110-60 Award Requirements**

Award requirements will be clearly outlined in the NOFO, and will include information relevant to many of the following:

- k. Performance Reporting
- l. Financial Reporting
- m. Payment and accounting system requirements
- n. Audit requirements
- o. Conflict of Interest Disclosures
- p. Data availability
- q. Other special conditions or requirements as allowed in 2 CFR 200.208

### **6-110-70 Amending an Applied Science Award**

All amendments to the agreement will be processed through OSMRE's system of record. Recipients must submit their proposed change and get approval before the change is implemented or funds are obligated.

When submitting an amendment in the system, an application kit will inform the recipient of required documentation for the requested amendment. Please provide all documents requested in the kit and any additional requirements OSMRE may request.

The awarding office will normally process amendments within 30 days of receipt of a complete amendment application. If approved, the amendment will be awarded under a new Notice of Award (NOA).

### **6-110-80 Reporting on an Applied Science Award**

Applied Science agreements are reported on a quarterly basis, unless otherwise stated in the Terms & Conditions of the NOA. All reporting due dates for financial and programmatic reports will be on the NOA for the recipient to refer to. Please see [2 CFR 200.328](#) and [2 CFR 200.329](#) for additional information.

If an extension on a report is needed, a one-time extension can be granted so long as the reports are not overdue, and a written justification is provided to OSMRE.

#### **6-110-90 Applied Science Closeout**

All awards being closed must not have any remaining funds and show a balance of zero in ASAP. All documentation as required by the NOFO, award Terms & Conditions, and 2 CFR 200.344 will be submitted into OSMRE's grant system of record. Please ensure to review the Terms & Conditions of the award for any special reporting requirements.

#### **6-110-95 Records Retention Requirements**

Please see [2 CFR 200.334](#) for retention requirements for records. Additional information can be found in [2 CFR 200 Subpart D](#), Post Federal Award Requirements, Record Retention and Access.

## **CHAPTER 6-120**

### **MINE DRAINAGE TECHNOLOGY INIATIATIVE PROGRAM**

#### **Table of Contents**

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6-120-20 Eligibility
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6-120-30 Proposal Requirements
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6-120-50 Review and Selection
6-120-60 Award Requirements
6-120-70 Amending a MDTI Award
6-120-80 Reporting Requirements for MDTI
6-120-90 MDTI Closeout
6-120-95 Federal Records Retention Requirements

#### **6-120-10 Purpose**

The purpose of this chapter is to provide guidance on the Mine Drainage Technology Initiative (MDTI) program with the Office of Surface Mining Reclamation and Enforcement (OSMRE). In this chapter, the guidance for how to find an opportunity, prepare and submit a proposal, the review and selection processes, and requirements for managing a MDTI agreement.

#### **6-120-15 Objectives**

The objective of the Mine Drainage Technology Initiative (MDTI) awards is to combat the long-term water pollution impacts of mining in coal fields and other areas of coal and metal mining. It was formed as a partnership of technical experts from industry, state and federal agencies, and academia who joined together to combat Acid Mine Drainage and related water-quality problems from mining and seek solutions.

MDTI agreements are used to address issues associated with mine drainage. This collaborative initiative exchanges information and resources for the purposes of:

- Developing an understanding of acidic and toxic mine drainage (MD) to better predict, avoid, monitor, and remediate mine drainage.
- Developing innovative solutions to acidic and toxic MD water-quality problems.
- Identifying, evaluating, and developing “best science” practices to predict acidic and toxic MD prior to mining.
- Identifying successful remediation practices for existing sources of acidic and toxic MD and describe the best technology for its prevention.

### **6-120-20 Eligibility**

Public, private, or non-profit entities are eligible. Applicants may be a federal, state, local, or tribal institution of higher education, or other qualified entity as described in the Notice of Funding Opportunity (NOFO).

### **6-120-25 How to Apply**

OSMRE publishes a notice-of-funding opportunity through grants.gov for a single cooperative agreement. Institutions who meet the criteria on the announcement may apply.

### **6-120-30 Proposal Requirements**

OSMRE selects studies that have the potential for improving the effectiveness of both the coal industry and the regulatory authority to conduct and regulate surface coal mining and reclamation activities that protect the environment and the public.

The applicant's proposal must address coal mining in one of OSMRE's three regions, serve the public as described in this chapter, and include a statement addressing the proposals value associated with coal mining reclamation or regulation. The proposal must not propose quality control or consumer evaluations for commercial products, include fees or profit, or include federal employee salary or compensation of any kind.

In addition to these requirements, the proposal must have a completed application kit for the funding opportunity. A completed application kit will include these items and any additional documents required in the NOFO or future directives. OSMRE encourages applicants to review the NOFO for detailed information for each required document.

- a. SF-424, Application for Federal Assistance
- b. Project Narrative
- c. Statement of Work
- d. SF-424A, Budget Information for Non-Construction Programs
- e. Detailed Budget Narrative
- f. Indirect Cost Rate Agreement or Cost Allocation Plan (CAP) Agreement, if applicable
- g. Conflict of Interest Statement
- h. Single Audit Reporting Statement
- i. Certification Regarding Lobbying or Disclosure of Lobbying Activities
- j. Overlap or Duplication of Effort Statement

### **6-120-40 Allowable Costs**

Costs must be allowable under the Office of Management and Budget's cost principles. See the applicable section in the Code of Federal Regulations (CFR), Title 2 Part 200, for more information.

## **6-120-50 Review and Selection**

As described in [2 CFR 200.204](#), application review information including the criteria and process to be used to evaluate applications must be included in the Notice of Funding Opportunity by the Federal awarding agency. Please see the NOFO for full details of the review and selection process in addition to the information below.

Prior to award, the program will review any applicant statement regarding potential overlap or duplication between the project to be funded and any other funded or proposed project in terms of activities, funding, or time commitment of key personnel. Depending on the circumstances, the program may request modification to the application, other pending applications, or an active award, as needed to eliminate any duplication of effort, or OSMRE may choose not to fund the selected project.

The program may not make a federal award to an applicant that has not completed the SAM.gov registration. If an applicant selected for funding has not completed their SAM.gov registration by the time the Bureau is ready to make an award, the program may determine that the applicant is not qualified to receive an award. The program can use that determination as a basis for making an award to another applicant. Prior to award, the program will evaluate the risk posed by applicants as required in 2 CFR 200.206. Programs document applicant risk evaluations using a Risk Assessment form.

Prior to approving awards for Federal funding in excess of the simplified acquisition threshold (currently \$250,000), OSMRE is required to review and consider any information about or from the applicant found in the Federal Awardee Performance and Integrity Information System. The Bureau will consider this information when completing the risk review. OSMRE uses the results of the risk evaluation to establish monitoring plans, recipient reporting frequency requirements, and to determine if one or more of the specific award conditions in 2 CFR 200.208 should be applied the award.

## **6-120-60 Award Requirements**

Award requirements will be clearly outlined in the NOFO, and will include information relevant to many of the following:

- a. Performance Reporting
- b. Financial Reporting
- c. Payment and accounting system requirements
- d. Audit requirements
- e. Conflict of Interest Disclosures
- f. Data availability
- g. Other special conditions or requirements as allowed in 2 CFR 200.208

## **6-120-70 Amending a MDTI Award**

All amendments to the agreement will be processed through OSMRE's system of record. Recipients must submit their proposed change and get approval before the change is implemented or funds are obligated.

When submitting an amendment in the system, an application kit will inform the recipient of required documentation for the requested amendment. Please provide all documents requested in the kit and any additional requirements OSMRE may request.

If approved, the amendment will be awarded under a new Notice of Award (NOA).

### **6-120-80 Reporting on a MDTI Award**

MDTI agreements are reported on a quarterly basis, unless otherwise stated in the Terms & Conditions of the NOA. All reporting due dates for financial and programmatic reports will be on the NOA for the recipient to refer to. Please see [2 CFR 200.328](#) and [2 CFR 200.329](#) for additional information.

If an extension on a report is needed, a one-time extension can be granted so long as the reports are not overdue, and a written justification is provided to OSMRE.

### **6-120-90 MDTI Closeout**

All awards being closed must not have any remaining funds and show a balance of zero in ASAP. All documentation as required by the NOFO, award Terms & Conditions, and 2 CFR 200.344 will be submitted into OSMRE's grant system of record. Please ensure to review the Terms & Conditions of the award for any special reporting requirements.

### **6-120-95 Records Retention Requirements**

Please see [2 CFR 200.334](#) for retention requirements for records. Additional information can be found in [2 CFR 200 Subpart D](#), Post Federal Award Requirements, Record Retention and Access.



## **CHAPTER 6-130 YOUTH COOPERATIVE AGREEMENT PROGRAM**

### **Table of Contents**

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6-130-30 Proposal Requirements
6-130-40 Allowable Costs
6-130-50 Review and Selection
6-130-60 Award Requirements
6-130-70 Amending a Youth Award
6-130-80 Reporting Requirements for Youth Award
6-130-90 Youth Closeout
6-130-95 Federal Records Retention Requirements

### **6-130-10 Purpose**

The purpose of this chapter is to provide guidance on the Youth program with the Office of Surface Mining Reclamation and Enforcement (OSMRE). This includes how to find an opportunity, prepare and submit a proposal, the review and selection processes, and requirements for managing a Youth agreement.

### **6-130-15 Objectives**

OSMRE offers various service and learning opportunities for students, recent graduates, and the public at large to get involved and make a difference. Program offerings include AmeriCorps terms, Volunteers in Service to America (VISTA) years of service, and semester internships. These offerings provide different paths for people, of all ages, to learn about the reclamation and restoration efforts taking place on abandoned mine lands.

The Youth Programs were developed to provide an opportunity for OSMRE to increase its engagement with young people with university or vocational degrees. Recipients of one of the Youth Programs financial assistance agreements will support an innovative partnership, working directly with OSMRE in the following areas:

1. Community and environmental reclamation.
2. Community environmental stewardship.
3. Economic improvement.
4. Educational opportunities.
5. Research.
6. Geographic information systems.
7. Mapping, and more.

### **6-130-20 Eligibility**

Non-profit entities with a 501(c)(3) status with the IRS, other than institutions of higher education are eligible or other qualified entities as described in the Notice of Funding Opportunity (NOFO).

### **6-130-25 Where to Apply**

Unless otherwise directed in the NOFO, non-profit entities who meet the criteria on the announcement may apply at grants.gov.

### **6-130-30 Proposal Requirements**

The applicant's proposal must address coal mining in one of OSMRE's three regions, serve the public as described in this chapter, and include a statement addressing the proposals value associated with coal mining reclamation or regulation. The proposal must not propose quality control or consumer evaluations for commercial products, include fees or profit, or include federal employee salary or compensation of any kind.

In addition to these requirements, the proposal must have a completed application kit for the funding opportunity. A completed application kit will include these items and any additional documents required in the NOFO or future directives. OSMRE encourages applicants to review the NOFO for detailed information for each required document.

- a. SF-424, Application for Federal Assistance
- b. Project Narrative
- c. Statement of Work
- d. SF-424A, Budget Information for Non-Construction Programs
- e. Detailed Budget Narrative
- f. Indirect Cost Rate Agreement or Cost Allocation Plan (CAP) Agreement, if applicable
- g. Conflict of Interest Statement
- h. Single Audit Reporting Statement
- i. Certification Regarding Lobbying or Disclosure of Lobbying Activities
- j. Overlap or Duplication of Effort Statement
- k. Provide proof of non-profit IRS 501(c)(3) status as determined by the Internal Revenue Service of non-profit organizations and institutions.

### **6-130-40 Allowable Costs**

Costs must be allowable under the Office of Management and Budget's cost principles. See the applicable section in the Code of Federal Regulations (CFR), Title 2 Part 200, for more information.

### **6-130-50 Review and Selection**

As described in 2 CFR 200.204, application review information including the criteria and process to be used to evaluate applications must be included in the Notice of Funding Opportunity by the Federal awarding agency.

Please see the NOFO for full details of the review and selection process in addition to the information below.

Prior to award, the program will review any applicant statement regarding potential overlap or duplication between the project to be funded and any other funded or proposed project in terms of activities, funding, or time commitment of key personnel. Depending on the circumstances, the program may request modification to the application, other pending applications, or an active award, as needed to eliminate any duplication of effort, or OSMRE may choose not to fund the selected project.

The program may not make a federal award to an applicant that has not completed the SAM registration. If an applicant selected for funding has not completed their SAM registration by the time OSMRE is ready to make an award, the program may determine that the applicant is not qualified to receive an award. The program can use that determination as a basis for making an award to another applicant. Prior to award, the program will evaluate the risk posed by applicants as required in 2 CFR 200.206. Programs document applicant risk evaluations using a Risk Assessment form.

Prior to approving awards for Federal funding in excess of the simplified acquisition threshold (currently \$250,000), OSMRE is required to review and consider any information about or from the applicant found in the Federal Awardee Performance and Integrity Information System. The Bureau will consider this information when completing the risk review. The awarding office uses the results of the risk evaluation to establish monitoring plans, recipient reporting frequency requirements, and to determine if one or more of the specific award conditions in 2 CFR 200.208 should be applied the award.

### **6-130-60 Award Requirements**

Award requirements will be clearly outlined in the NOFO, and will include information relevant to many of the following:

- a. Performance Reporting
- b. Financial Reporting
- c. Payment and accounting system requirements
- d. Audit requirements
- e. Conflict of Interest Disclosures
- f. Data availability
- g. Other special conditions or requirements as allowed in 2 CFR 200.208

### **6-130-70 Amending a Youth Award**

All amendments to the agreement will be processed through OSMRE's system of record. Recipients must submit their proposed change and get approval before the change is implemented or funds are obligated.

When submitting an amendment in the system, an application kit will inform the recipient of required documentation for the requested amendment. Please provide all documents requested in the kit and any additional requirements OSMRE may request.

If approved, the amendment will be awarded under a new Notice of Award (NOA).

### **6-130-80 Reporting on a Youth Award**

All Youth awards are reported on a quarterly basis, unless otherwise stated in the Terms & Conditions of the NOA. All reporting due dates for financial and programmatic reports will be on the NOA for the recipient to refer to. Please see [2 CFR 200.328](#) and [2 CFR 200.329](#) for additional information.

If an extension on a report is needed, a one-time extension can be granted so long as the reports are not overdue, and a written justification is provided to OSMRE.

### **6-130-90 Youth Closeout**

All awards being closed must not have any remaining funds and show a balance of zero in ASAP. All documentation as required by the NOFO, award Terms & Conditions, and 2 CFR 200.344 will be submitted into OSMRE's grant system of record. Please ensure to review the Terms & Conditions of the award for any special reporting requirements.

### **6-130-95 Records Retention Requirements**

Please see [2 CFR 200.334](#) for retention requirements for records. Additional information can be found in [2 CFR 200 Subpart D](#), Post Federal Award Requirements, Record Retention and Access.

## **CHAPTER 6-140**

### **PASSIVE TREATMENT PROTECTION PROGRAM**

#### **Table of Contents**

- 6-140-10 Purpose
- 6-140-15 Objectives
- 6-140-20 Eligibility
- 6-140-25 How to Apply
- 6-140-30 Proposal Requirements
- 6-140-40 Allowable Costs
- 6-140-50 Review and Selection
- 6-140-60 Award Requirements
- 6-140-70 Amending a PTPP Award
- 6-140-80 Reporting Requirements for PTPP
- 6-140-90 PTPP Closeout
- 6-140-95 Federal Records Retention Requirements

#### **6-140-10 Purpose**

The purpose of this chapter is to provide guidance on the Passive Treatment Protection Program (PTPP) with the Office of Surface Mining Reclamation and Enforcement (OSMRE). The instructions in this chapter will help to find an opportunity, prepare, and submit a proposal, the review and selection processes, and requirements for managing a PTPP agreement, if awarded.

#### **6-140-15 Objectives**

In accordance with Section 404 of SMCRA, lands and water eligible for reclamation or drainage abatement under Section 404 of Public Law 95-87 (the Act), Stat. 445-532 as amended, are those which were mined for coal or which were affected by mining, waste banks, coal processing, or other coal mining processes prior to August 3, 1977, and left in an unclaimed or inadequately reclaimed condition, for which there is no continuing reclamation responsibility under state or other Federal laws. The funding priorities and technical focus for this program are to use appropriated PTPP funds for the comprehensive abatement and treatment of water pollution discharged from abandoned mine lands to restore water quality in streams in a manner that would allow the aquatic biological community to recover.

#### **6-140-20 Eligibility**

Funding is available to assist local 501(c)(3) status organizations (e.g., watershed groups), organizations using AmeriCorps and its VISTA programs, local governments, tribal governments, and most state government agencies, or other qualified entity as described in the Notice of Funding Opportunity (NOFO).

## **6-140-25 How to Apply**

Unless otherwise directed in the NOFO, institutions who meet the criteria on the announcement may apply at [grants.gov](https://www.grants.gov).

## **6-140-30 Proposal Requirements**

Preapplication coordination is required. An environmental impact assessment is required. This program is eligible for coverage under E.O. 12372, "Intergovernmental Review of Federal Programs." An applicant should consult the office or official designated as the single point of contact in their state for more information on the process the state requires to be followed in applying for assistance if the state has selected the program for review. Applicant's proposal must address coal mining in one of OSMRE's three regions, serve the public as described in this chapter and include a statement addressing the proposals value associated with coal mining reclamation or regulation. The proposal must not propose quality control or consumer evaluations for commercial products, include fees or profit, or include federal employee salary or compensation of any kind.

Must address one of the topics addressed in the NOFO. Certain award specific requirements may be addressed in the NOFO. Please ensure these requirements are met in addition to the provisions above.

In addition to these requirements, the proposal must have a completed application kit for the funding opportunity. A completed application kit will include these items and any additional documents required in the NOFO or future directives. OSMRE encourages applicants to review the NOFO for detailed information for each required document.

- a. SF-424, Application for Federal Assistance
- b. Project Narrative
- c. Statement of Work
- d. SF-424A, Budget Information for Non-Construction Programs
- e. Detailed Budget Narrative
- f. Indirect Cost Rate Agreement or Cost Allocation Plan (CAP) Agreement, if applicable
- g. Conflict of Interest Statement
- h. Single Audit Reporting Statement
- i. Certification Regarding Lobbying or Disclosure of Lobbying Activities
- j. Overlap or Duplication of Effort Statement

## **6-140-40 Allowable Costs**

Costs must be allowable under the Office of Management and Budget's cost principles. See the applicable section in the Code of Federal Regulations (CFR), Title 2 Part 200, for more information.

## **6-140-50 Review and Selection**

As described in [2 CFR 200.204](#), application review information including the criteria and process to be used to evaluate applications must be included in the Notice of Funding Opportunity by the Federal awarding agency. Please see the NOFO for full details of the review and selection process in addition to the information below.

Prior to award, the program will review any applicant statement regarding potential overlap or duplication between the project to be funded and any other funded or proposed project in terms of activities, funding, or time commitment of key personnel. Depending on the circumstances, the program may request modification to the application, other pending applications, or an active award, as needed to eliminate any duplication of effort, or OSMRE may choose not to fund the selected project.

The program may not make a federal award to an applicant that has not completed the SAM.gov registration. If an applicant selected for funding has not completed their SAM.gov registration by the time OSMRE is ready to make an award, the program may determine that the applicant is not qualified to receive an award. The program can use that determination as a basis for making an award to another applicant. Prior to award, the program will evaluate the risk posed by applicants as required in 2 CFR 200.206. Programs document applicant risk evaluations using a Risk Assessment form.

Prior to approving awards for Federal funding in excess of the simplified acquisition threshold (currently \$250,000), the Bureau is required to review and consider any information about or from the applicant found in the Federal Awardee Performance and Integrity Information System. OSMRE will consider this information when completing the risk review. The awarding office uses the results of the risk evaluation to establish monitoring plans, recipient reporting frequency requirements, and to determine if one or more of the specific award conditions in 2 CFR 200.208 should be applied to the award.

## **6-140-60 Award Requirements**

Cooperative Agreements require substantial involvement in the scope of work and are subject to performance monitoring. There are no match requirements for this program. The length of the period of performance will be five years. Any other award requirements will be clearly outlined in the NOFO, and will include information relevant to many of the following:

- a. Performance Reporting
- b. Financial Reporting
- c. Payment and accounting system requirements
- d. Audit requirements
- e. Conflict of Interest Disclosures
- f. Data availability
- g. Other special conditions or requirements as allowed in 2 CFR 200.208

### **6-140-70 Amending a PTPP Award**

Each recipient grantee may apply for non-funded extensions of time as necessary to complete the project up to one year. If additional funding is needed, an additional application must be submitted in response to a Notice of Funding Opportunity.

All amendments to the agreement will be processed through OSMRE's system of record. Recipients must submit their proposed change and get approval before the change is implemented or funds are obligated.

When submitting an amendment in the system, an application kit will inform the recipient of required documentation for the requested amendment. Please provide all documents requested in the kit and any additional requirements OSMRE may request.

The awarding office will normally process amendments within 30 days of receipt of a complete amendment application. If approved, the amendment will be awarded under a new Notice of Award (NOA).

### **6-140-80 Reporting Requirements for PTPP**

PTPP agreements are reported on a semi-annual basis, unless otherwise stated in the Terms & Conditions of the NOA. All reporting due dates for financial and programmatic reports will be on the NOA for the recipient to refer to. Please see [2 CFR 200.328](#) and [2 CFR 200.329](#) for additional information.

If an extension on a report is needed, a one-time extension can be granted so long as the reports are not overdue, and a written justification is provided to OSMRE.

Detailed program narratives and financial narratives as part of their semi-annual grant reports, which will also include status updates on each approved PTPP project for corresponding agreements. Status reports for each PTPP project would include:

- PTPP funding amount requested vs. actual amount received.
- All other funding source(s) leveraged (e.g., in-kind services, private and public contributions, AML grants, etc.).
- Total amount expended on the project to date and the amount expected to be spent.
- Project accomplishments.
- Progress made towards meeting overall project objectives.
- Project partners.
- Benefits/performance measures accomplished to date.



**6-140-90 PTPP Closeout**

All awards being closed must not have any remaining funds and show a balance of zero in ASAP. All documentation as required by the NOFO, award Terms & Conditions, and 2 CFR 200.344 will be submitted into OSMRE's grant system of record. Please ensure to review the Terms & Conditions of the award for any special reporting requirements.

**6-140-95 Records Retention Requirements**

Please see 2 CFR 200.334 for retention requirements for records. Additional information can be found in 2 CFR 200 Subpart D, Post Federal Award Requirements, Record Retention and Access.

**EXHIBIT 1**

**IN-KIND SERVICES**

Sponsor Organization:	Dates Covered by Report:
-----------------------	--------------------------

SERVICE/MATERIAL	AMOUNT	VALUE
SUPPLIES		
Computers/Printers	# of months used @ cost per month	
Photocopies	# of copies @ agency rate	
Telephone	# of calls @ agency rate	
Fax	# of pages faxed @ agency rate	
Postage	Actual expense	
SUPERVISION	# of hours x supervisor's actual rate of pay	
TRAVEL	# of miles @ agency rate (not to exceed current government mileage rate)	
OFFICE SPACE	# of square feet x actual cost per month (include rationale for # of square feet used)	
VOLUNTEER WORKERS	# of hours x minimum wage rate	
OTHER: May include, but is not limited to:		
Prorated utilities		
Accounting		
Maintenance		
General overhead (document)		

**EXHIBIT 2**

**BUDGET INFORMATION**

**BUDGET INFORMATION – Construction Programs (Format)**

<i>Project Activity/Costs</i>	<i>OSMRE Funding</i>	<i>Other Federal Agency Funding</i>	<i>Non- Federal Partners Funding</i>	<i>Partners In-Kind Contrib- utions</i>	<i>Total Cost</i>
1. Administrative					
2. Design					
3. Construction					
4. Project Inspection/ Monitoring					
5. Other Major Costs (Itemize)					
6. TOTAL					

*Optional Form*

**EXHIBIT 3**

**REVIEW FINDINGS AND RECOMMENDATIONS MEMO**

Date  
Memorandum  
To: Appropriate Manager  
From: Watershed Project Coordinator  
Subject: Watershed Cooperative Agreement Review and Findings and Recommendation  
Project Name:  
Applicant:

Total Project Cost: \$ \_\_\_\_\_  
OSMRE Contribution: \$ \_\_\_\_\_  
OSMRE Percentage: \_\_\_\_\_ %  
Other Funding: \$ \_\_\_\_\_  
In-Kind Value: \$ \_\_\_\_\_

Total Number of Partners (including OSMRE): \_\_\_\_\_  
Number of partners providing ONLY funding: \_\_\_\_\_  
Number of partners providing ONLY in-kind services (No funding): \_\_\_\_\_  
Number of partners providing BOTH in-kind services and funding: \_\_\_\_\_

**I. SUMMARY OF PROPOSED PROJECT**

**II. APPLICATION PACKAGE**

The application/case file must contain the following documents to be funded.

	Yes	No	NA
• Completed/signed SF 424, application face sheet	( )	( )	( )
• Signed SF 424D, Construction Assurances	( )	( )	( )
• Program narrative statement – OSMRE 51(optional form)	( )	( )	( )
• Project budget	( )	( )	( )
• List of officers for AVS and Debarment check	( )	( )	( )
• List of project partners and contributions	( )	( )	( )
• AVS/Debarment checks for applicant and identified contractors/subcontractors. (Additional AVS/Debarment checks on contractors/subcontractors added after award are the responsibility of the applicant, with the assistance of ACSP coordinator, if needed. These checks must be documented in the quarterly and final reports.)	( )	( )	( )

- Documentation of legal right of access ( ) ( ) ( )
- Copy of IRS 501 (c)(3) (non-profit) designation ( ) ( ) ( )
- Eligibility opinion ( ) ( ) ( )
- Project schedule demonstrating commitment to completion within the two-year period of performance ( ) ( ) ( )
- Evidence of coordination with state AML authority ( ) ( ) ( )
- Evidence of e-AMLIS update ( ) ( ) ( )
- NEPA compliance (categorical exclusion or environmental assessment and Finding of No Significant Impact [FONSI]) as appropriate ( ) ( ) ( )
- Federally mandated clearances including USFWS for endangered species (unless delegated to state) and state Historic Preservation Officer (SHPO) ( ) ( ) ( )
- Identification of any permits that will be required and assurance from the applicant of compliance prior to construction. (Primary permits of interest to OSMRE are for wetlands, floodplains and stream encroachments and any state environmental permits ( ) ( ) ( )
- Long term water quality and quantity information including, at a minimum: flow, pH, acidity, total and ferrous iron, and aluminum. A minimum of 12 monthly samples is preferred ( ) ( ) ( )
- A discussion of the treatment technology to be used, and project design, including material quantities, if available ( ) ( ) ( )
- A discussion of the long term maintenance, and renovation expectations of the system, and the applicant's plan for addressing those needs ( ) ( ) ( )

### III. SUMMARY EVALUATION

The project must have tangible benefits

1. Indicate benefits to be derived from completion of this project:
  - Water quality improvement.
  - Pollutants removed.
  - Stream segments improved or restored.
  - Aquatic habitat improved or restored.
  - Public water supply improved.
  - Fisheries improved.
  - Recreation opportunities enhanced.
  - Educational opportunities created.
  - Aesthetic enhancement.
  - Community benefits/pride generated.
  - Associated land restoration.
  - Health & Safety hazards eliminated.
  
2. Respond to the following queries about the project.
  - \_\_\_\_\_ Project costs are reasonable.
  - \_\_\_\_\_ There are provisions for post completion operation and maintenance of the facility.
  - \_\_\_\_\_ There are provisions for post-completion water quality monitoring to enable evaluation of long-term success.
  - \_\_\_\_\_ There are no outstanding or unresolved issues.
  
3. Discuss treatment technology and water chemistry and evaluate probability of long term success and possible maintenance issues.
  
4. Discuss and evaluate project construction estimate
  
5. Identify what organization is responsible for long term maintenance of the project, and its capabilities.

### IV. SUMMARY OF FINDINGS AND RECOMMENDATIONS

## EXHIBIT 4

### SAMPLE FINANCIAL REVIEW APPOINTMENT CONFIRMATION LETTER

U.S. DEPARTMENT OF THE INTERIOR  
Office of Surface Mining Reclamation and Enforcement

Dear Applicant:

Your organization's Watershed Cooperative Agreement Program application dated [insert date of application] has been referred for financial review. In accordance with payment requirements outlined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 CFR Part 200, the Office of Surface Mining Reclamation and Enforcement requires recipients to maintain financial data to provide for the safeguard and accountability of Federal funds.

To ensure [name of organization] meets these requirements, we need to review the following:

- Accounting and payroll records with supporting source documents;
- Written procedures for purchases, accounting system, and cash management; and
- Organizational structure.

Our review will begin at [time] on [date] at [location]. This confirms our telephone conversation of [date] with [contact person for the organization]. If you have any questions, please phone me at [phone number].

Sincerely,

*Financial Specialist*  
*Office Location*

## EXHIBIT 5

### ON-SITE FINANCIAL REVIEW INTERVIEW AND CHECK SHEET INTERVIEW

Interviewee:

Interviewer:

Date of Interview:

Applicant's Name:

1. Describe your organization, its purpose and history.
2. What type of accounting system does your organization have?
  - Cash/accrual
  - Checking account
  - Manual/computerized \_\_\_\_\_
3. Who is involved in maintaining your accounting system?
  - Your own staff/or accountant
4. What kind/type of records does your organization maintain (including source documents)?
5. Do you have Federal grants? If yes, how do you keep them separate?
6. Do you know the strings attached to Federal dollars (A110 and A-122)?
7. Do you have any non-Federal funding?
8. Have you had a program review/audit from any source?
9. Do you have written procedures for:
  - Procurement/Contracting
  - Accounting
  - Equipment Management
  - Personnel
  - Hiring
  - Salary Increases
  - Time Cards
  - Position/job descriptions
10. How did you arrive at the budget figures included with your application?



## ON-SITE FINANCIAL REVIEW CHECKLIST

Reviewer:

Review Date:

Applicant's Name:

	Y	N	NA
1. Accounting system capable of tracking OSMRE projects costs?			
- Written procedures?			
- Ability to keep OSMRE funds separate from other funds?			
- Accounting staff?			
- Checking Account?			
2. Internal Control System?			
- Separation of Duties?			
- Source documents summarized periodically?			
3. Maintain general and subsidiary records?			
4. Recent audit/program review?			
5. Written purchasing/procurement/contracting procedures?			
6. Written personnel records/procedures?			
7. Written payroll records/procedures?			
8. Written property management policies/procedures?			
9. Knowledge of OMB Circulars A-110 and A-122?			
10. Reviewed Proposed Project Budget?			
11. Knowledge of Suspension and Debarment for subcontractors?			
12. Does the organization owe the Federal government money? (A-129)			

**EXHIBIT 6**

**FINANCIAL REVIEW FINDINGS AND RECOMMENDATIONS MEMO**

UNITED STATES DEPARTMENT OF THE INTERIOR  
Office of Surface Mining

Memorandum

To: Designated Official  
From: Watershed Cooperative Agreement Program Financial Specialist  
Subject: Financial Review

Applicant Name:

I. Summary of Findings of the Financial Review in the following areas:

Accounting System –  
Records Management –  
Cash Management –  
Internal Controls –  
Written Procedures –

II. Summary of System Weaknesses:

III. Summary of Improvements Recommended and Communicated to the Applicant:

IV. Technical Assistance Offered:

V. Recommendation regarding Adequacy of Financial Management System:

## CONCLUSION AND CONTACTS

The *Office of Surface Mining Reclamation and Enforcement Federal Financial Assistance Manual* (OSMRE-FFAM) was created to provide all OSMRE applicants and recipients the policy requirements that serve OSMRE Financial Assistance awards. This manual is to serve all recipients and their subrecipients and/or subawards, unless stated otherwise in regulation or the terms and conditions. This manual is also designed for individuals and organizations interested in learning about OSMRE Financial Assistance. Each Part of this manual dove into the structure of OSMRE, its organization, staff, and the Financial Assistance programs and their processes.

The Program Support Directorate (PSD), Division of Financial Assistance (DFA) develops and maintains this document. If there are any questions or comments regarding this manual, please connect with the Headquarters contact. For direct questions regarding an existing agreement or application, please see the appropriate regional contact.

## REGIONAL CONTACTS

OFFICE	ADDRESS	CONTACT
Interior Region National Capital (Headquarters)	1849 C Street NW, Washington, D.C. 20240	Tawana McKeither <a href="mailto:tmckeither@osmre.gov">tmckeither@osmre.gov</a>
Interior Region 1 & 2 (Appalachian)	3 Parkway Center, Pittsburgh, PA 15220	Bill Winters <a href="mailto:bwinters@osmre.gov">bwinters@osmre.gov</a>
Interior Region 3, 4, & 6 (Midcontinent)	501 Belle Street, Suite 216, Alton, IL 62002	Paul Fritsch <a href="mailto:pfritsch@osmre.gov">pfritsch@osmre.gov</a>
Interior Region 5, 7-11 (Western)	P.O. Box 2506, Lakewood, CO 80225-0065	Hillary Smith <a href="mailto:hsmith@osmre.gov">hsmith@osmre.gov</a>

To reach Grants Management Specialists please use the following mailboxes:

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