

CHAPTER 4-400 PROCEDURES FOR CIVIL PENALTY GRANTS

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4-400-00 What does this chapter do?

This chapter explains the procedures we, the Office of Surface Mining, Reclamation, and Enforcement (OSMRE) use for grants for civil penalty reclamation under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). These procedures apply to your program if we have provided funding for a civil penalty project in your state or tribe as defined in section 402(g) of SMCRA for coal reclamation on eligible lands and waters in your jurisdiction. We created separate procedures to reflect the unique characteristics of civil penalty collections and funding.

4-400-10 What types of funds may you get and how may you use them?

If you have a qualifying project under Section 402(g)(4) of SMCRA, you may submit a request for funds to us. It is our discretion to provide you with funding based on amounts collected from the assessment of civil penalties under Section 518 of SMCRA.

4-400-20 What grant policies apply to your program?

- A. You must use funds for activities authorized in SMCRA and described in your approved reclamation plan or your grant application.
- B. You 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.

4-400-30 How do you apply for a Civil Penalty Grant?

- A. You may mail or e-mail your application to the appropriate OSMRE awarding office.

- B. You may apply at any time for a grant of any or all of the program funds that are available to you.
- C. Your application must include the following items.
 - 1. [SF-424](#) cover page 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. You 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. Do you 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 we need to award the grant. If the application is not complete, we will inform you as soon as practicable of the additional information needed to process the award and work with you to obtain the required documents.

4-400-40 How will we process your grant award?

- A. We will award your grant as soon as funding becomes available. We 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 your organization or its officials are not debarred, suspended, or excluded for purposes of receiving funding.

4. Confirm that you are in compliance with OMB's single audit requirements.
 5. Assess your risk to receive grant funds.
 6. Before the planned award, we will send information about the award to our Office of Communications for Congressional and public news release. Our awarding office must follow the notification procedure established by the Office of Communications.
 7. Approve the award through our electronic grants system.
 8. Send the approved award to you.
 9. Document the award in an official grant file. The file must include your application and all other materials you sent us, all our findings and determinations, and all other information needed to understand the application and award process.
- B. The award will cover the performance period you requested in your application.
- C. The award we approve obligates the federal funds. You accept the award and its conditions when you start work under the agreement or when you first draw down the funds.

4-400-50 How do you meet environmental compliance requirements?

- A. When you conduct a coal reclamation project using civil penalty funds, you 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, you must request an Authorization to Proceed (ATP) from us. You must not expend any funds on a coal reclamation project until we have 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 we issue the ATP.
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. You are responsible to ensure that all applicable laws, clearances, permits, or requirements are met before you expend Civil Penalty funds.
- C. Projects or activities other than coal reclamation under [30 CFR Part 874](#) may not require an ATP from us. 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.

4-400-60 How will we process grant amendments?

- A. When you wish to make changes in an assistance agreement, you must follow the requirements in [2 CFR Part 200 Subpart D](#).
- B. We will not approve a request for a change to a grant, including a time extension or funding increase which we receive after the scheduled end of the performance period unless there are unforeseen circumstances not under your direct control. You must justify these extenuating circumstances to the satisfaction of the authorized official in the awarding OSMRE office.
- C. We must approve the following changes to a grant agreement with a formal amendment.
 - 1. Add more funds to the agreement.
 - 2. Deobligate funds.
 - 3. Make the grant performance period longer or shorter.
- D. Either you or we may initiate a grant amendment. However, we must both agree on the amendment terms. You must submit an amendment application via email or mail a paper application. The amendment application must include the following:
 - 1. Signed or approved Form [SF 424](#), identifying the type of change you are requesting in item 8.
 - 2. A narrative explanation and justification for the requested change. You may use the optional [OSMRE 51](#) form, or your transmittal letter or any other format.
 - 3. If your request will change the budget or the subaccounts, provide revised budget information. You may use the optional OSMRE 49 form or any alternative format showing the proposed subaccounts and amounts.
- E. We will approve or disapprove your amendment application within 30 days of receiving it. We will process amendments in accordance with the provisions for awarding new agreements in section 4-400-40 above, except that notification of the Office of

Communications is required only if the amendment provides additional funding of more than \$100,000. We will send you notification that the amendment has been approved.

4-400-70 What reports must you send us?

- A. You 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 30 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. You must submit your financial report on an [SF 425](#) reporting form.
 2. The narrative performance report may be filed electronically or on paper in any format. The report must describe your accomplishments under the grant during this reporting period.
- B. We will review your programmatic and financial reports. We will verify and determine if you have complied with the reporting requirements and provided all the information we need. The following list is a minimum review:
1. An official authorized to act for your 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. We 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 our drawdown records.
 6. All claimed costs must be supported by your accounting records and you must be able to reconcile them.
- C. If any concerns are identified, our awarding office will work with you to correct the report.
- D. We will prepare a monitoring statement to document our review.

4-400-80 What closeout information will you send us and how will we close your

agreement?

- A. Upon completion of each agreement, you must send us a final financial report ([SF-425](#)) and a final performance report. You must make every reasonable effort to send the reports no later than 90 calendar days after the end of the grant. We may extend the due date for the final reports at your request. You however must provide justification for the need to extend this date.

- B. The receiving OSMRE office must perform the following actions to close out the agreement:
 - 1. Review the closeout information you provided.
 - 2. Verify that we have added all known changes to the grant by appropriate revisions or grant amendments.
 - 3. Resolve with you any grant suspensions, withholding of funds, disputes, and violations of grant clauses and assurances.
 - 4. Write a brief evaluation of your performance under the grant and keep it in our official grant file.
 - 5. Reconcile the inventory of Federally-owned property to our records, and approve the transfer to a subsequent agreement.
 - 6. Verify that the agreement and the file are complete. We will use the Grant and Cooperative Agreement Closeout Checklist or an approved alternative form to document this step.

- C. Process the final grant action to deobligate any unexpended funds. See [Chapter 4-100](#) for information on what we will do with the deobligated funds.

- D. We will send you a written notice that we consider the grant to be closed, and remind you of the record retention and access requirements in [Chapter 2-260](#).

- E. All civil penalty funds are available until expended or the performance period has ended, whichever occurs first. You may submit subsequent requests for funding if we authorize additional funding and apply for either a new agreement or as an amendment to an existing open agreement.