

## **PART 886--STATE AND TRIBAL RECLAMATION GRANTS**

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Authority: 30 U.S.C. 1201 et seq., as amended.

### **Sec. 886.1 Scope.y**

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This part sets forth procedures for grants to States/Indian tribes having an approved plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980) should be used as applicable.

### **Sec. 886.3 Authority.y**

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The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress. Such moneys are distributed annually to the States/Indian tribes.

**Sec. 886.10 Information collection.**

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The collections of information contained in 30 CFR part 886 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1029-0059. The information will be collected to meet the requirements of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) and which are necessary to implement the State/Indian tribe reclamation program. This information will be used by the OSM to ensure that the State/Indian tribe complies with the Grants Management Common Rule (43 CFR part 12, subpart C) and sound principles of grants management. The obligation to respond is required to obtain a benefit in accordance with Pub. L. 95-87. Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., Room 640 NC, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029-0059), Washington D.C. 20503.

**Sec. 886.11 Eligibility for grants.**

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A State/Indian tribe is eligible for grants under this part if it has a reclamation plan approved under part 884 of this chapter.

**Sec. 886.12 Coverage and amount of grants.**

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(a) An agency may use moneys granted under this Part to administer the approved reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A-87.

(b) Grants shall be approved for reclamation and eligible lands and water in accordance with 30 U.S.C. 1234 and 1241 and 30 CFR 874.12, 875.12, and 875.14, and in accordance with the priorities stated in 30 U.S.C. 1233 and 1241 and 30 CFR 874.13 and 875.15. To the extent

technologically and economically feasible, public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds should use fuel other than petroleum or natural gas.

(c) Acquisition of land or interests in land and any mineral or water rights associated with the land shall be approved for up to 90 percent of the costs.

**Sec. 886.13 Grant period.**

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(a) The period for administrative costs of the authorized agency should not exceed the first year of the grant.

(b) The Director shall approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of 30 U.S.C. 1201 et seq.

**Sec. 886.14 Annual submission of budget information.**

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The agency shall cooperate with OSM in the development of information for use by the Director in the preparation of his/her requests for appropriation of moneys for reclamation grants. OSM shall determine the schedule for submitting this information on an annual basis. Funds required to prepare this submission may be included in the grants under 30 CFR 886.12.

**Sec. 886.15 Grant application procedures.**

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(a) An agency shall use application forms and procedures specified by OSM. A preapplication is not required if the total of the grant requested is within the amounts distributed to the State/Indian tribe annually by the Director based on the Congressional appropriation.

(b) OSM shall approve or disapprove a grant application within 60 days of receipt. If OSM approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(c) If the application is not approved, OSM shall inform the agency in writing of the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application. OSM shall process the revised application as an original application.

(d) The agency shall agree to perform the grant in accordance with the Act, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

(e) Complete copies of plans and specifications for projects shall not be required before the grant is approved nor at the start of the project. The Director may review such plans and specifications after the start of the project in the agency office, on the project site, or at any appropriate site.

**Sec. 886.16 Grant agreements.**

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(a) OSM shall prepare a grant agreement that includes:

(1) A statement of the work to be covered by the grant; and

(2) A statement of the approvals of specific actions required under this subchapter or the conditions to be met before approvals can be given if moneys are included in the grant for these actions.

(b) The State/Indian tribe may assign functions and funds to other Federal, State, or local agencies. The grantee agency shall retain responsibility for overall administration of that grant, including use of funds and reporting.

(c) The Director shall sign two copies of the agreement and transmit them either by certified mail, return receipt requested, or by hand delivery, to the agency for countersignature. The grant constitutes an obligation of Federal funds at the time the Director signs the agreement. The agency shall have 20 calendar days from the date of the Director's signature to execute the agreement in order to accept its terms and conditions. Unless an extension of time is approved by the Director, failure to execute the agreement within 20 calendar days shall result in an immediate deobligation of the total Federal grant amount.

(d) Although the funds are obligated when the Director signs the agreement, for any expenditure requiring compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), funds may not be used by the State/Indian tribe until all actions necessary to ensure compliance with NEPA are taken.

(e) The agency shall submit a completed Form OSM-76 (Abandoned Mine Land Reclamation Problem Area Description) showing proposed funding for any planned non-emergency project work to the applicable OSM field office before it may use funds for construction activities.

(f) Neither the approval of the grant application nor the award of any grant shall commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

**Sec. 886.17 Grant amendments.**

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(a) Grant amendments. (1) A grant amendment is a written alteration of the terms or conditions of the grant agreement, whether accomplished on the initiative of the agency or OSM. All procedures for grant amendments shall conform to those in 43 CFR part 12, subpart C.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes that may require a grant amendment. The agency shall notify the Director in advance of changes that will result in an extension of the grant period or require additional funds, or when the agency plans to make a budget transfer from administrative costs to project costs or vice versa.

(b) OSM shall either approve or disapprove the amendment within 30 days of its receipt.

### **Sec. 886.18 Grant reduction, suspension, and termination.**

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(a) Conditions for reduction, suspension or termination.

(1) If an agency violates the terms of a grant agreement or an approved reclamation plan, OSM may reduce, suspend, or terminate the grant.

(2) If an agency fails to obligate moneys distributed and granted within three years from the date of grant award, or within an extension granted under Sec. 886.13 or Sec. 886.17, OSM may reduce the grant in accordance with Sec. 872.11 (b)(1) and (b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under part 735 of this chapter is terminated, OSM shall terminate the grant awarded under this part. This paragraph does not apply to Indian tribes who receive reclamation funds without having an approved regulatory program.

(4) If an agency is not in compliance with the following nondiscrimination provisions, OSM shall terminate the grant;

(i) Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252 (42 U.S.C. 2000d-1). "Nondiscrimination In Federally Assisted Programs," which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, "Equal Employment Opportunity," requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, "Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs."

(5) If an agency fails to enforce the financial-interest provisions of Part 705 of this Chapter, OSM shall terminate the grant.

(6) If an agency fails to submit reports required by this Subchapter or Part 705 of this Chapter, OSM shall terminate the grant.

(7) If an agency fails to submit a reclamation plan amendment as required by Section 884.15, OSM may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

(b) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance in a State plan or application, a notice of award, or elsewhere, OSM may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(4) Withhold further grant awards for the program; or

(5) Take other remedies that may be legally available.

(c) Grant reduction, suspension, and termination procedures.

(1) The OSM official delegated grant signature authority shall give the agency at least 30 days written notice of intent to reduce, suspend, or terminate a grant. OSM must send this notice by certified mail, return receipt requested. OSM shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) OSM shall afford the agency opportunity for consultation and remedial action before reducing or terminating a grant.

(3) The OSM official delegated grant signature authority shall notify the agency of the termination, suspension, or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, the agency shall retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(5) Upon receiving notification of OSM's intent to terminate the grant, the agency shall not make any new commitments without OSM's approval.

(6) OSM may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A-87.

(7) Either OSM or the agency may terminate or reduce a grant if both parties agree that continuing the program would not produce beneficial results commensurate with the further expenditure of funds. Such a termination for convenience shall be handled as an amendment and shall be signed by the OSM official delegated grant signature authority.

(d) Appeals.

(1) Within 30 days of OSM's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Director.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Director shall decide the appeal within 30 days of receipt.

(2) Within 30 days of the Director's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Secretary shall act upon the appeal within 30 days of receipt.

**Sec. 886.19 Audit.**

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The agency shall arrange for an independent audit pursuant to guidance provided by the General Accounting Office and the Office of Management and Budget.

**Sec. 886.20 Administrative procedures.**

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The agency shall follow administrative procedures governing accounting, payment, property, and related requirements contained in 43 CFR part 12, subpart C and use the property form specified by OSM and approved by the Office of Management and Budget.

**Sec. 886.21 Allowable costs.**

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(a) Allowable reclamation costs include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of the acquisition of land.

(b) Costs must conform with any limitations, conditions, or exclusions set forth in the grant agreement.

**Sec. 886.22 Financial management.**

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(a) The agency shall account for grant funds in accordance with the requirements of 43 CFR part 12, subpart C. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made, they should be made as closely as possible to the actual time of the disbursement.

(e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

**Sec. 886.23 Reports.**

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(a) For each grant, the agency shall annually submit to OSM reporting forms specified by OSM.

(b) Upon project completion, the agency shall submit a completed Form OSM-76 and any other closeout reports specified by OSM.

**Sec. 886.24 Records.**

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The agency shall maintain complete records in accordance with 43 CFR part 12, subpart C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly-

(a) The amount and disposition of all assistance received for the program; and

(b) The total direct and indirect costs of the program for which the grant was awarded.

**Sec. 886.25 Special Indian lands procedures.**

FEDERAL REGISTER CITE: 60 FR 9974 (9980)

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(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations arising from past mining practices and begin reclamation of other areas determined to have high priority on such lands.

(b) The Director is authorized to receive proposals from Indian tribes for projects that should be carried out on Indian lands subject to this Section and to carry out these projects under parts 872 through 882 of this chapter.

(c) For reclamation activities carried out under this section on Indian lands, the Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian lands.

(d) If a proposal is made by an Indian tribe and approved by the Director, the Tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to OSM under Sec. 872.11(b)(5).

(e) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.