

FY 2022 STATE INITIAL GRANT GUIDANCE

I. INTRODUCTION

President Biden signed the Bipartisan Infrastructure Law (BIL; [Public Law 117-58](#)) on November 15, 2021, making a once-in-a-generation investment in the Nation's infrastructure and economic competitiveness. This landmark investment will rebuild America's critical infrastructure, tackle the climate crisis, address legacy polluted sites, advance environmental justice, and drive the creation of good-paying union jobs. By addressing long overdue infrastructure and environmental improvements and strengthening our resilience to the changing climate, this investment in our communities across the country will grow the economy sustainably and equitably for decades to come.

Section 40601 of the BIL creates an orphaned well site plugging, remediation, and reclamation program within the Department of the Interior (DOI) to address orphaned wells and well sites on Federal lands.¹ Subsection (d) creates a grant program for Tribes, and subsection (c) creates three types of grants for states:

1. Initial grants (Section 40601(c)(3))
2. Formula grants (Section 40601(c)(4))
3. Performance grants (Section 40601(c)(5))

This document:

1. sets forth the application process for states and provides requirements for carrying out activities under the Initial grants authorized by Sec. 40601(c)(3) of the BIL; and
2. describes what the Department of the Interior considers to be the best practices for establishing, conducting, and reporting on the activities of a program to plug, remediate, and reclaim orphaned wells on state and private lands.

The document indicates what information is **required** in applications for an Initial grant and for expenditure of the grant funding. It also includes a number **strongly recommended** best practices that can help maximize the benefits and transparency of activities carried out with Initial grant funding. Many of these best practices may form the basis for future requirements in the subsequent orphaned well grants, so states expecting to apply for subsequent rounds of grants are encouraged to ensure their programs apply these best practices as early as possible in order to promote consistent standards for well plugging and reclamation activities, and that benefits from the program can be properly tracked.

¹ Section 40601 amends Section 349 of the Energy Policy Act of 2005, but for simplicity all references to the amended Section 349 will be written as components of Section 40601 of the BIL in this document.

II. DEFINITIONS

“Administrative costs” identified in Sec. 40601(c)(2)(B)(i), limited to not more than 10 percent of the funds received,² are those costs that cannot be directly attributed to well plugging and site reclamation projects, but instead to general grants management or program administration. Administrative costs can be expended for personnel or non-personnel costs, and can be direct or indirect, but should represent the costs to the State for managing the overall grant-funded work rather than preparation for and execution of individual projects.

“Communities of color” are those communities with a higher than national average percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino. That is, all people other than non-Hispanic white-alone individuals. The word “alone” in this case indicates that the person is of a single race, not multiracial. A block group is an area defined by the Census Bureau that usually has in the range of 600-3,000 people living in it.³

“Date of receipt of funds” - as identified in Sec. 40601(c)(3)(A)(i)(II)(cc) this is the date on which the awarded grant is available for obligation in the receiving State’s financial system of record. For purposes of this guidance, the date of receipt shall refer to the date when a recipient organization initiates its first drawdown of funds from the Automated Standard Application for Payment (ASAP).

“Federal land” is defined in Sec. 40601(a)(1) as land administered by a land management agency within the Department of Agriculture or the Department of the Interior.

“Federal wells” – Orphaned wells and well sites on Federal land are considered “Federal wells” and are eligible for funding under the Sec. 40601(b) Federal Program. Orphaned wells—and well sites associated with such wells—that were drilled subject to a federal permit to drill may be considered Federal wells eligible for funding under the Sec. 40601(b) Federal Program, regardless of surface ownership. As the funding under the Federal Program is not expected to be sufficient to remediate all eligible Federal wells, a State may use grant funds received under Sec. 40601 to plug and remediate Federal wells located on State or private land and may include those wells in its inventory of documented orphaned wells on State or private land. Any plugging and reclamation activities on such split-estate orphaned wells would be subject to the Federal government’s on-shore plugging and reclamation standards.

² Except as provided by Section 40601(c)(2)(B)(ii), which allows larger amounts to be used for administrative costs under the small-scale Initial grants described further in Section IV of this document.

³ This definition is adopted from USEPA’s EJSCREEN definitions at: <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen#demoindex>

“Low-income communities” are those communities that in the last 12 months had a median household income less than twice the poverty level.⁴

“Orphaned Well” - The term “orphaned well” with respect to Federal or Tribal land, means a well that is not used for an authorized purpose, such as production, injection, or monitoring, and for which no operator can be located, or the operator of which is unable to plug the well and to remediate and reclaim the well site. With respect to State or private land, the term also:

- (1) has the meaning given the term by the applicable State; or
- (2) if that State uses different terminology, has the meaning given another term used by the State to describe a well eligible for plugging, remediation, and reclamation by the State.

“Tribal and indigenous communities” are communities whose members make up a Federally recognized Indian Tribe, a State-recognized Indian Tribe, an Alaska Native community or organization, a Native Hawaiian organization, or any other community of indigenous people located in a State, including indigenous persons residing in urban communities.

“Unobligated amounts” - For purposes of determining the deadline for expenditure under Sec. 40601(c)(3)(C), “unobligated amounts” covers any funding that is not subject to a definite commitment that creates a legal liability of the State for an immediate or future payment for goods or services ordered or received, including by contract or sub-contract award.⁵

III. PERMISSIBLE USES OF INITIAL GRANT FUNDS

A. As provided under Section 40601(c)(2), a State may use funding from Initial grants to:

- plug, remediate, and reclaim orphaned wells located on State-owned or privately-owned land;
- identify and characterize undocumented orphaned wells on State and private land;
- rank orphaned wells based on factors including public health and safety, potential environmental harm, and other land use priorities;
- make information regarding the use of funds received available on a public website;
- measure and track emissions of methane and other gases associated with orphaned wells;

⁴ This definition is similar to USEPA’s EJSCREEN definition at <https://www.epa.gov/ejscreen/ejscreen-map-descriptions#category-demographics>

⁵ See Government Accountability Office definitions at: <https://www.gao.gov/assets/gao-05-734sp.pdf>

- measure and track contamination of groundwater or surface water associated with orphaned wells;
 - remediate soil and restore native species habitat that has been degraded due to the presence of orphaned wells and associated pipelines, facilities, and infrastructure;
 - remediate land adjacent to orphaned wells and decommission or remove associated pipelines, facilities, and infrastructure;
 - identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on disadvantaged communities, including communities of color, low-income communities, and Tribal and indigenous communities; and
 - administer the program of work identified in its grant agreement.
- B. Initial grants are available for such activities where the surface is owned by the State or by a private party, including, potentially, individually owned Indian properties that are held in trust by the Secretary of the Interior but deemed by the State to be ‘orphaned wells’ on ‘private land,’ for purposes of compliance with this section only. Funds may not be used for activities where the surface is owned by the United States or by an Indian Tribe.
- C. Section 40601(c)(3)(A) allows States to request an Initial grant of up to \$25 million under clause (i)—referred to as large-scale Initial grants—or up to \$5 million under clause (ii)—referred to as small-scale Initial grants. States may receive one Initial grant under 40601(c)(3): either a small-scale grant or a large-scale project grant, but not both.
- D. Section 40601(c)(A)(i)(II)(cc) provides that a State that applies for a large-scale Initial grant must include a certification that the State will use not less than 90% of its requested funding to issue new contracts, amend existing contracts, or issue grants for plugging, remediation, and reclamation work by not later than 90 days after the date of the receipt of the funds.
- E. Section 40601(c)(3)(C) - Expenditure and Reimbursement: A State that receives funds under the Initial grant authority shall reimburse the Secretary in an amount equal to the amount of funds that remain unobligated on the date that is one year after the date of receipt of the funds. In other words, all funds must be obligated within a year of date of receiving the funds otherwise unobligated funds shall be reimbursed to the Secretary.

IV. INSTRUCTIONS FOR INITIAL GRANT APPLICATIONS

A. *Deadline*

- i. Small-Scale Grants (up to \$5 million): States may apply for an Initial grant of up to \$5 million within a time frame sufficient to ensure that periods of performance and final obligations are complete prior to September 30, 2030.
- ii. Large-Scale Grants (up to \$25 million): The deadline for submitting applications for Initial grants of up to \$25.0 million is **May 13, 2022, 11:59 pm EDT**.

Applications must be emailed to **orphanedwells@ios.doi.gov**. An email acknowledging receipt will be provided by DOI to the sending State within one business day of receipt.

B. *Required Elements*

To be complete, the application should include sufficient details as described below to provide assurances regarding the ability of the state to properly carry out and oversee the activities to be funded.

- i. Federal Forms: The following Federal forms, all available at [Grants.gov](https://www.grants.gov), must be submitted for an Initial grant request for funding (the application) to be complete:
 - (a) SF-424v4 Application for Federal Assistance
 - (b) SF-424A Budget Information for Non-Construction Programs
An SF-424A is a standard form that provides an estimate of the work's major cost centers (e.g., State employee labor, training, equipment, contracting and other operational costs), where the sum total of the budget justification equals the overall Initial grant request.
 - (c) SF-LLL Disclosure of Lobbying Activities
 - (d) OMB Form 4040-0010 Key Contacts Form
- ii. Detailed Budget Proposal/Justification: This detailed information supports and identifies the estimated costs provided in the SF-424A and should include an itemized budget breakdown with unit costs for the period of the Initial grant funding and the basis for estimating the costs of personnel salaries, fringe benefits, project staff travel, materials and supplies, equipment, and consultants and contracts. This document should also include narrative descriptions of the items included in the project budget.

- iii. Project Abstract Summary (OMB Form Number 4040-0019): A project abstract of not more than one page will include the project purpose, activities to be performed, expected deliverables or outcomes, intended beneficiaries, and subrecipient activities (if known).

C. *Recommended Elements*

The following list includes the features the Department of the Interior has determined are important components of successful orphaned well program. Although not required in relation to Initial grant funding, many are expected to be required for subsequent grants, and States are encouraged to incorporate these features into projects funded with Initial grants.

For those parts that are applicable, the State should include the following information as a narrative attachment to the required elements listed above:

- (a) The State's process for determining that a well has been orphaned, including what efforts will be made to redeem financial assurances or otherwise recoup remediation costs from any parties responsible under State law;
- (b) A description of the State's plugging standards, including the witnessing requirements (qualifications of witness, documentation);
- (c) Details of the State's prioritization process for evaluating and ranking orphan wells and associated surface reclamation, including criteria, weighting, and how such prioritization will address resource and financial risk, public health and safety, potential environmental harm (including methane emissions where applicable), and other land use priorities;
- (d) If no prioritization process currently exists, the State should describe its plans to develop and implement a prioritization process;
- (e) Details of how the State will identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on disadvantaged communities, including communities of color, low-income communities, and Tribal and indigenous communities;
- (f) The methodology to be used by the State to measure and track methane and other gases associated with orphaned wells, including how the State will confirm the effectiveness of plugging activities in reducing or eliminating such emissions;
- (g) The methodology to be used by the State to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the State will confirm the effectiveness of plugging activities in reducing or eliminating such contamination;

- (h) The methodology to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure;
- (i) Methods the State will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the State will use to solicit feedback on the program from local officials and the public;
- (j) Latitude/Longitude and all other data elements and associated units of measure as indicated in the Orphaned Well Data Reporting Template that accompanies this guidance;
- (k) How the State will use funding to locate currently undocumented orphaned wells;
- (l) Plans the State has to engage third-parties in partnerships around well plugging and site remediation, or any existing similar partnerships the State currently belongs to;
- (m) Training programs, registered apprenticeships, and local and economic hire agreements for workers the State intends to conduct or fund in well plugging or site remediation;
- (n) Plans the State has to support opportunities for all workers, including workers underrepresented in well plugging or site remediation, to be trained and placed in good-paying jobs directly related to the project;
- (o) Plans the state has to incorporate equity for underserved communities into their planning, including supporting the expansion of high-quality, good paying jobs through workforce development programs and incorporating workforce strategy into project development;
- (p) Procedures the State will use to coordinate with Federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, Federal, and Tribal land;
- (q) The State's authorities to enter private property, or a State's procedures to obtain landowner consent to enter private property, in the event that any wells to be plugged will be accessed from privately owned surface;
- (r) A work schedule covering the period of performance of the Initial grant; and
- (s) If applicable, a federally approved Indirect Cost Rate Agreement or statement regarding State's intention to negotiate or utilize the de minimis rate.

D. Restrictions on funding use (90% must be for contracts & grants)

States may not use more than 10 percent of the funds received as authorized under Sec. 40601(3)(c)(3)(A)(i) for administrative costs associated with activities listed in Section III. This limitation does not apply to an Initial grant of up to \$5.0 million received as authorized under Sec. 40601(3)(c)(3)(A)(ii). However, States receiving the smaller Initial grants must nonetheless comply with 2 CFR § 200.414, which requires States to adhere to federally-approved indirect cost rate agreements.

E. Certifications

- i. Small-Scale Grants: For small-scale grant applications up to \$5 million, a certification (see attached format) must be submitted to the Department that:
 - (a) The State has a plugging, remediation, and reclamation program in effect for orphaned wells; or
 - (b) The State has the capacity to initiate such a program; or
 - (c) The funds provided under this paragraph will be used to carry out any administrative action necessary to develop an application for a formula grant or performance grant.
- ii. Large-Scale Grants: For large-scale grant applications up to \$25 million, a certification (see attached format) must be submitted to the Department that:
 - (a) The State is a Member State or Associate Member State of the Interstate Oil and Gas Compact Commission;
 - (b) There are 1 or more documented orphaned wells located in the State; and
 - (c) The State will use not less than 90 percent of the funding requested to issue new contracts, amend existing contracts, or issue grants for plugging of orphan wells, and reclamation of associated surface conditions by not later than 90 days after the date of receipt of the funds.

V. RECOMMENDED STANDARDS FOR MEASUREMENT, PLUGGING, AND REMEDIATION

A. Pre and Post-Plugging Measurement or Estimation of Air and Water Pollution

- i. As a best practice, States are encouraged to conduct an inspection of each orphaned well site being considered under this grant to measure or estimate current contamination of surface water and groundwater and to measure or estimate current emissions of methane, hydrogen sulfide, and other gas emissions. States are also expected to conduct post-plugging inspections and measurements to verify the lack of gaseous emissions or water contamination from plugged wells and the achievement of vegetation performance standards appropriate to the

site's future land uses. Such post-plugging inspection and measurement will be documented to create a verifiable record of activities performed under the grant.

- ii. States are encouraged to follow a third-party methodology for measurement and verification, such as the American Carbon Registry's methodology (once finalized).⁶ States should report in their Project Narrative the methodology or methodologies they will use or require their contractors to use.
- iii. Pre- and post-plugging measurements or estimates, by well, of water contamination, gaseous emissions (particularly methane), and acres restored should be included in the Final Performance Report described in Section VII.C. below.

B. Well Plugging and Site Remediation Standards

- i. States with established and documented well plugging standards and regulations will require their contractors to meet those requirements. For a State that does not have established well plugging standards, it is strongly recommended that the work reflect, at a minimum: the plugging standards in the Bureau of Land Management's Onshore Oil and Gas Order No. 2 Section III.G for plugging wells (https://www.blm.gov/sites/blm.gov/files/energy_onshoreorder2.pdf); or, for offshore wells, the provisions of 30 CFR Part 250.
- ii. States will adhere to any well plug witnessing and documentation requirements pursuant to State law.
- iii. For States with established well abandonment standards (inclusive of those actions necessary to complete surface reclamation and revegetation), all well closures shall meet those requirements. If a State does not have well abandonment standards, then for a well site to be considered plugged and fully abandoned, such that it can be reported as a completed unit, the work must reflect, at a minimum, the Bureau of Land Management's Reclamation and Abandonment Standards. For additional details, see: <https://www.blm.gov/sites/blm.gov/files/Chapter%206%20-%20Reclamation%20and%20Abandonment.pdf>

VI. FEDERAL AND TRIBAL COORDINATION

Efficiency and cost-effectiveness in well plugging and site remediation will be maximized by ensuring proper coordination in these activities between States, Tribes, and the Federal government. As early as practical—preferably before State grant applications

⁶ <https://americancarbonregistry.org/carbon-accounting/standards-methodologies/plugging-abandoned-orphaned-oil-and-gas-wells>

are submitted—States should contact the relevant offices of Tribal or Federal land management agencies to ensure the maximum level of coordination between States, Federal land management agencies, and Tribes. States may reach out to the IOGCC or the DOI/OEPC for a list of appropriate contacts.

When undertaking work on Federal land under a cost-sharing, Good Neighbor, or other arrangement with the Federal government, States must collect the data required to be reported under the BIL for wells plugged and sites remediated on Federal land. Early coordination with Federal agencies is encouraged to ensure that States are collecting the proper data in a format that can most easily be transferred to the Federal government.

States are also encouraged to consult with Federal agencies and Tribal representatives to ensure appropriate and efficient collaboration on compliance issues (e.g., cultural resources, endangered species, sacred sites) and to minimize disruption of operations and land management activities, such as planning field activities to avoid special events that might be impacted by the work.

VII. REPORTING REQUIREMENTS

- A. *Quarterly Reports:* Consistent with 2 C.F.R. § 200.328, States must submit quarterly financial and performance reports to the DOI within 30 days of the close of each Federal fiscal quarter. Financial reporting will use [SF-425](#) or other forms if specified by the Office of Management and Budget.
- B. *Personal Property report:* States will be required to submit an annual Tangible Personal Property Report (SF-428) if grant funds are used to purchase equipment.
- C. *Final Financial and Performance Reports:* Consistent with 2 C.F.R. § 200.329, States must submit a final financial and performance reports to the DOI within 120 days of period of performance end date. Financial reporting will use [SF-425](#) or other forms if specified by the Office of Management and Budget.
- D. *15-month report:* States receiving either type of Initial grant must submit a report, no later than 15 months after the date on which the State receives the funds, describing the means by which the State used the funds in accordance with its certification. If the 15-month report includes all of the detail that would have been provided in the Final Financial and Performance Report described in VII.C, a separate Final Financial and Performance Report need not be submitted..
- E. *Data Collection and Reporting*
 - 1. In order to simplify and standardize reporting and tracking requirements and ensure that the Federal resources utilized are well-spent and achieving

the statutory objectives, States are encouraged to track the following data for all actions taken using orphaned well grant funding. Such data elements will help inform, and be incorporated into, the processes being developed for the forthcoming Formula grants and Performance grants listed in Section I above. As appropriate, data tracking may be accomplished through existing systems such as the Groundwater Protection Council's Risk-Based Data Management Solutions (RBDMS):

- (a) Well location information (e.g., latitude/longitude);
- (b) Well type (e.g. orphaned production or disposal well);
- (c) Bureau of Labor Statistics NAICS codes for each of the employees working on each well site, along with the hours each employee spent on each site;
- (d) The population living within a half mile radius of each well being plugged;
- (e) Pre-plugging methane emissions (if available);
- (f) Post-plugging methane emissions;
- (g) Surface water contamination identified;
- (h) Surface water contamination remediated;
- (i) Groundwater contamination identified;
- (j) Groundwater contamination remediated;
- (k) Acreage impacted by well and infrastructure (site footprint);
- (l) Revegetation performance standard monitoring start date;
- (m) Revegetation performance standard attainment date (project complete);
- (n) Actual total cost per well of plugging and surface reclamation; and
- (o) If the project is located in a low-income, disadvantaged, and/or minority community.

2. This list highlights important parameters that DOI will report to Congress annually and is a subset of the larger data set to be reported by the States as part of the quarterly performance reports (VII.A.) and 15-month report (V.A.iii.) and detailed in the Orphaned Well Data Reporting Template accompanying this guidance. States that intend to apply for a Formula grant (as per forthcoming Formula grant guidance) should note that information regarding the activities under such grants are required to be posted on a public website, and States are strongly encouraged to develop such a website to provide information to the public about the activities undertaken using Initial grant funding as well. Developing a website is an allowable use of Initial grant funds and ensuring that Initial grant activities are tracked in the same manner as Formula grant activities will allow for a better determination of the successes of the funding, help meet goals of transparency and accountability, and make it easier for the State to meet future reporting requirements.

- F. After providing the grantee an opportunity to redact personally identifiable or proprietary information, the Department of the Interior will post successful grant applications on a publicly available web site.
- G. The Department of the Interior will publish a summary of performance accomplishments on a publicly available web site, following submission by the States of the report required in Section VII.C of this guidance.

VIII. DOI STANDARD AWARD TERMS AND CONDITIONS

- A. DOI Standard Award Terms and Conditions will be included in all Initial grants, at the time of award. These standard terms and conditions can be found at:
<https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>
- B. Award recipients will be expected to comply with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers*, which requires awardees and sub-awardees of Federal financial assistance awards to maximize the use of goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive.
- C. The Federal awarding agency may make site visits as warranted to ensure appropriate fiscal accountability and oversight. States shall provide Federal awarding agency access to relevant documentation in state possession and facilitate, to the extent necessary and appropriate, Federal awarding agency access to project sites.
- D. For project work that involves construction, alteration, or repair, award recipients, and any sub-awardees, will be expected to comply with the Davis-Bacon Act, which requires that not less than locally prevailing wages and fringe benefits be paid to employees.
- E. States are encouraged to consider prioritizing projects, and/or the benefits that flow from those projects, in disadvantaged communities.
- F. The DOI Freedom of Information Act Office provides guidelines to requestors of grant applications around what information may be redacted from applications. This information includes patent rights, confidential financial information, personally identifiable information (PII), and detailed budget, consultant, and business assets information. 2 CFR § 200.338 places limitations on public access to award-related documents.

- G. As required by Section 70914 of the Bipartisan Infrastructure Law on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products.

DRAFT

State Certification

Orphaned Well Site Plugging, Remediation, And Restoration

Small-Scale Initial Capacity Grant

Consistent with Section 40601(c)(3)(A)(ii)(III) of the Infrastructure Investment and Jobs Act (aka Bipartisan Infrastructure Law), the State or Commonwealth of

_____ certifies that it:

- has in effect a plugging, remediation, and reclamation program for orphaned wells;

OR

- has the capacity to initiate such a program;

OR

- that the funds will be used to carry out any administrative actions necessary to develop an application for a formula grant or a performance grant under Section 40601(c)(4) or Section 40601(c)(5), respectively.

Certifying Official Name

Title

Certifying Official Signature

Date

State Certification

Orphaned Well Site Plugging, Remediation, And Restoration

Large-Scale Initial Project Grant

Consistent with Section 40601(c)(3)(A)(i)(II)(aa) of the Infrastructure Investment and Jobs Act (aka Bipartisan Infrastructure Law), the State or Commonwealth of

_____ certifies that it is a Member State or Associate Member State of the Interstate Oil and Gas Compact Commission.

The State or Commonwealth also certifies that it has one (1) or more documented orphaned wells located within our State or Commonwealth.

And the State or Commonwealth certifies that it will use no less than 90 percent of the funds requested under this grant to issue new contracts, amend existing contracts, or issue grants for plugging, remediation and reclamation work on orphaned wells within our State or Commonwealth by not later than 90 days after the date of receipt of the funds.

Certifying Official Name

Title

Certifying Official Signature

Date