

REGROW Initial Grants: Study Guide

General Principles

- Goal of initial grants was to help unemployed oil and gas workers by getting funds to states quickly.
 - Up to \$25 million for well-established plugging programs that can put large sums of money to use immediately.
 - Up to \$5 million for programs that need to build capacity or require a smaller sum of money.
- REGROW does not establish a federal program for wells on state or private lands.
 - Compare § 349(b) Federal Program with § 349(c) Funding for State Programs.
 - Do not assume that requirements for primacy/delegated programs (e.g., UIC, abandoned mine lands) apply here.
 - State grants available in discrete amounts for limited time.
 - States use their own authorities, definitions, and procedures. See for example definition of orphaned wells in § 349(a)(5)(B).
- DOI should be working with the states in partnership to ensure a successful implementation.
 - DOI has no jurisdiction over wells on state or private land.
 - States remain the leading authorities on idle and orphan oil and gas wells.
- DOI's guidance is just that.
 - DOI has no authority to add requirements to REGROW through guidance.
 - Watch for attempts to apply—through DOI guidance—requirements that were revised, rejected, or deferred by Congress in the drafting of REGROW.

Application and Award

- Initial grant applications were designed to be streamlined and expedited.
 - State must submit certification required by § 349(c)(3)(A).
 - Compare with more detailed information required for formula grants by § 349(c)(4)(B).
- Applications for larger grants due within six months of enactment.
- Funds **shall** be disbursed by DOI within 30 days of receipt of application.

Activities

- State **may** use grant funding for any of the purposes listed in § 349(c)(2).
- State determines how to spend the funds.
- Compare the “may” preceding the state list with the “shall” preceding the list of requirements for the federal program in § 349(b)(2).

Reporting

- The reporting requirements for states are limited.
 - Within 15 months of receipt of initial grant funds, state must report to DOI how funds were used in accordance with the state's certification. See § 349(c)(3)(D).

- Although not required in the application for an initial grant, § 349(c)(4)(B) requires the state to include in the application for a formula (or performance) grant how information about funded activities “will be made available on a public website.”
- Earlier drafts of the legislation contained annual reporting requirements for states. These requirements did not pass.
- Under § 349(f), DOI must submit an annual Report to Congress on the federal program and the grants to states. This subsection does not authorize DOI to require states to
 - submit data to DOI on the general populations of idle or orphan wells, or
 - measure or estimate the quantities of methane or other gasses emitted from orphaned wells or emissions reduced by plugging orphaned wells.

What to Look for in the Draft Initial Grant Guidance

- Clarification of the 90-day certification requirement and definition of the term “obligation.”
 - § 349(c)(3)(A)(i) requires a state applying for an initial grant up to \$25 million to certify that “the state will use not less than 90 percent of the 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 receipt of the funds.” [This certification is not required for initial grants up to \$5 million.]
 - § 349(c)(3)(C) requires a state to reimburse DOI for initial grant funds “that remain unobligated on the date that is 1 year after the date of receipt of the funds.”
 - DOI guidance should clarify that initial grant funds must be obligated but not expended within one year.
 - DOI may attempt to provide the states flexibility in use of initial grant funds. Flexibility would be welcomed provided it does not give DOI unwarranted discretion over state programs or create unnecessary administrative burdens.
- Clarification of programmatic expenditures versus administrative expenditures.
 - What staffing is considered programmatic? Which equipment is considered programmatic?
 - These distinctions may be less significant for initial grants than formula or performance grants. The larger initial grants are intended to be used primarily for contracts or grants for plugging, remediation, and reclamation, and there is no administrative cost limitation for the smaller initial grants.
- Clarification of split-estate issues.
 - The draft guidance may define state and private lands in terms of surface ownership.
 - The draft guidance may address coordination with federal and tribal land managers.
- Measurement or tracking of methane emissions or groundwater contamination.
 - As noted above, use of grant funds to address methane emissions or groundwater contamination is an option for the states. A state determines what, if anything, to do in the best interest of the state.
 - DOI has no authority to require these activities as a condition of state grants.
- Federal priorities.
 - DOI may attempt to require states to give plugging priority to certain orphan wells, such as methane emitters or wells in EJ communities.

- States will determine their own priorities. They are not required to adjust their priority ranking systems to meet DOI requirements.
- DOI may attempt to require states to provide opportunity for public comment on the priority ranking of the orphan wells to be plugged with grant funds. Any discussion of public comment procedures should be deferred to the guidance on formula grants. The tight statutory deadlines for use of initial grant funds leaves no time to implement these procedures.
- Data collection and reporting.
 - DOI may attempt to require states to provide a list of orphan wells as part of the application.
 - Early drafts of the legislation required states to list the orphan wells that would be plugged as part of an application. This requirement did not pass.
 - Because of the rolling nature of orphan well inventories and the need for flexibility to substitute one well for another, the drafters replaced the list of wells with an estimate of the number of wells that would be plugged with grant funds.
 - The draft guidance may list data that must be collected or reported on orphan wells plugged and habitat restored. Some of this data states already collect and report. Other data elements may or may not be readily available.
- Requirements related to jobs and labor.
 - DOI should provide guidance on the types of funded activities that qualify as construction under Davis-Bacon.
 - Watch for other requirements in the draft guidance related to jobs goals and data.