

**U.S. Department of the Interior**  
**Orphaned Wells Program Office**

**Phase 1 State Formula Grant Guidance: Frequently Asked Questions & Answers**  
**July 2023**

**Q: How many phases will there be for state formula grants?**

- It is the intention of the Department, subject to adjustment as circumstances dictate, to allow the states an opportunity to apply for formula grants in up to six phases—annually starting in 2023 through 2028. All states may divide the total formula grant the state is eligible to receive over all six phases, or as few of phases as is required to adhere to phasing requirements outlined in the guidance. Nine states can receive the entire formula grant in Phase 1 or any other single phase.

**Q: Where can a state find out its total formula grant eligibility and Phase 1 eligibility?**

- Refer to Attachment B of the Phase 1 State Formula Grant Guidance.

**Q: Why are the formula grant eligibility amounts different from what was announced by the Department on January 31, 2022?**

- The total formula award amounts have not changed. For some states, the amounts available for application in Phase 1 vary from the draft guidance released on January 30, 2023, as a result of changes made by the Department to phasing, modified, in part, in consideration of feedback from states.

**Q: Can a state receive its entire formula grant in Phase 1?**

- States eligible to receive \$25 million or less in total formula grants, as indicated in Attachment B to the final formula grant guidance, may receive the entire formula grant in Phase 1. Nine states fall into this category.

**Q: Will the total formula grant amount a state is eligible to receive change between phases or over the life of the program?**

- The Department does not expect to recalculate the formula. Attachment B shows the total amount each state is eligible to receive in formula grants over all phases. This total is not expected to change over the life of the program. During each phase, a state may apply for a grant up to \$25 million or 25% of the state's total formula eligibility, whichever of the two is greater. A state may receive this amount in each phase until the state has received all formula grant funds the state is eligible to receive.

**Q: Can a state apply for less than it is eligible to receive in Phase 1 or a subsequent phase?**

- Yes. States are not required to apply for a certain grant amount. In Phase 1, states may apply for a grant up to the amount identified in Attachment B, and it may opt to apply for a lesser amount. In each phase, states are encouraged to apply for only the amount of funds the state expects to be able to obligate within five years of the date of receipt of the funds for eligible expenses.

**Q: Is a state required to apply for a formula grant in Phase 1 or any other phase?**

- No. States may apply for a grant up to the state's eligible amount in any of the formula phases.

**Q: If a state doesn't apply for a formula grant in Phase 1 or a subsequent phase, does the state lose access to those funds?**

- No. States may apply for formula grants in any or all phases until the state has been awarded the total amount it is eligible to receive, as identified in Attachment B to the final guidance. If a state does not apply for the full amount that it is eligible to receive in Phase 1 or another phase, the remaining amount will be available in future phases. A state may not receive more than its Phase 1 eligible amount in any one phase. The Bipartisan Infrastructure Law (Public Law 117-58) requires the Department to obligate all funds by September 30, 2030.

**Q: How much time will there be between phases, and how soon after receiving a formula grant in one phase can a state apply for another formula grant in the next phase?**

- The application window for Phase 1 is between the release of the final formula grant guidance and December 31, 2023. The application window for Phase 2 is expected to open in 2024. More information and guidance on applying for Phase 2 grants will be made available at a later date; however, that guidance is not expected to change significantly from Phase 1 guidance.

**Q: When will a state know how much it's eligible to receive in Phase 2?**

- Final Phase 2 eligibility will be announced prior to the opening of the Phase 2 application window. However, the amount a state is eligible to receive in Phase 1 is very likely the same amount it will be eligible to receive in Phase 2 and all subsequent phases, up to the point where the state has been awarded all its formula grant funds. Accordingly, the eligible funding for the final phase may be less than for previous phases due to the state reaching its total formula grant funding eligibility.

**Q: Is there a requirement that states obligate no less than 90% of the funds in 90 days toward well plugging, remediation, or reclamation, as was the requirement with Initial Grants?**

- No. Any unobligated funds remaining 5 years after the date of the receipt of the funds (effective date of the awards), however, must be reimbursed to the Department. Additionally, administrative costs are limited to 10 percent of the awarded funds.

**Q: Where can I find additional information regarding eligible administrative expenses and how might a state best structure a program to assign costs to projects?**

- The Interior Business Center plans to provide technical assistance tools to assist states with questions related to administrative costs.

**Q: Can formula grant funds be used on Tribal allotment lands?**

- Yes. States are encouraged to coordinate with Tribes to identify and conduct well plugging work on allotted Tribal lands. If you are interested in this, please contact program staff for more information.

**Q: Can formula grant funds be used by a state to clean up soil or water contamination caused by orphaned wells?**

- Yes. The funds may be used to remediate any soil or water contamination caused by orphaned wells.

**Q: Can funds be used to plug wells with federal surface ownership but state mineral rights?**

- Generally, yes, funds can be used for well plugging, reclaiming adjacent land, and to decommission or remove associated pipelines, facilities, and infrastructure. However, depending on the extent and nature of the adjacent land contamination, the surface responsibility may or may not remain with the Federal government. These situations require a case-by-case analysis. Please contact Department of the Interior staff to discuss further.

**Q: Where can I find more information on allowable costs for grants?**

- 2 CFR 200 Subpart E Cost Principles.

**Q. When are states required to sample, measure, or track surface or groundwater contamination?**

- States are not expected to sample surface or groundwater at every area where wells are plugged. Instead, what is expected is that states will use a screening process to evaluate each well site for the potential for surface water or groundwater impacts to have occurred from previous activities at the site. A typical initial screening process would consist of reviewing available information regarding the well and the area it is located and conducting a site inspection to assess the site status and condition.

Information related to the well and its location to be collected and reviewed may include:

- Well history, drilling records, and construction;
- Regulatory agency files regarding past spills, notices of violation, or complaints, and details regarding any previous spill cleanup or remediation performed;
- Available information regarding nearby water sources, water wells, springs, or known monitoring wells near the well, as well as local hydrogeology;
- Available surface or groundwater monitoring data in the area or reports of known nearby contamination; and
- Available historical and current aerial photos that can also be examined to identify infrastructure and sumps/pits at the well site; evidence of contamination, stressed vegetation, and changes in the site; onsite and adjacent land use and vegetation cover at the site, topography and surface drainage direction; and proximity of the well to surface water.

After reviewing available information, a site visit would be performed where the condition of the well and associated infrastructure would be examined, drainage and nearby surface water, water wells, or monitoring wells would be verified, and visual evidence of contamination or indicators of contamination would be identified, such as visible oil on the ground, hydrocarbon odor, surface staining, reduced or stressed vegetation, and oil/gas related sheen observed on surface water.

Based on the results of the screening process, surface water and/or groundwater sampling may be recommended to be included as part of the site reclamation activity for selected wells. Additional information obtained during site reclamation or soil remediation activities may also warrant performing subsequent surface or groundwater sampling. For example, during the excavation and removal of identified shallow contaminated soil, evidence of significant vertical or horizontal migration of contamination or shallow groundwater impacts may be discovered that may warrant additional evaluation of the potential for significant surface or groundwater impacts.

Following plugging, states are expected to visually inspect the site to verify the lack of releases of oil, gas, water, or other contaminants at the surface. This visual inspection

should occur any time after the conclusion of plugging activities but no later than within 12 months of the conclusion of plugging activities.

**Q. What is the Department looking for in the 5-year work plan and schedule, since the level of detail described in the guidance as well plugging and remediation efforts regularly change as site priorities and conditions evolve over time?**

- Budgets and workplans should address the activities funded under the states' programs. They should cover the entire five years and be sufficiently detailed for the Department to know what the formula funds are supporting and how the funds are being used.

The expectation is that states will provide within their application a description of how they intend to use the formula grant funding and the general scope of the activities they expect to conduct. It is understood by the Department that the plans may be preliminary and are subject to change as the site priorities and conditions evolve over time, and that the scope of certain activities may be more well-defined at this stage in the state's planning process.

For example, if a state has a working list of high priority wells to be plugged or has already developed draft scopes of work for contracts to be procured, it would be expected that the state would be able to provide much more detail of this planned activity, including a list of specific wells to be included in initial contracts as well as a more fully defined schedule for initiating procurement, awarding a contract, initiating field work such as methane emissions screening and measurement or well plugging, and completing activities under the contract. Planned milestones and performance goals could be identified, such as issuing an invitation for bid or request for proposals, issuing contract award, completing necessary environmental reviews and obtaining any required permits, initiating field work, and performance goals in completing the work under the contract (e.g. complete plugging, reclamation, and/or remediation of a specified number of wells). By contrast, if the state needs to work through its prioritization process to select the wells it intends to address using formula grant funding, the level of detail included in the work plan would reflect this. A specific list of wells to be incorporated into contracts may not be available, but a general estimate of the number of wells expected to be plugged, reclaimed, or remediated using the allocated funding to this activity can be provided based on the state's past experience and costs of completing work. For this activity, milestones may be identified for completing activities that would support the prioritization effort, such as completing initial methane screening of wells, or completing screening of a list of wells for their proximity to communities of color, low-income communities, and Tribal and Indigenous communities.

Similarly, if the state was planning to initiate an effort to identify additional orphaned wells through the use of drones but has not previously conducted this activity, the defined scope at this point may consist of a general description of how drones are expected to be

used, and a preliminary schedule for development of specifications for procurement of a drone or a contractor that uses drones, identifying the specific areas to be surveyed, completing an initial pilot test survey of an identified area, evaluating the results obtained to determine if and how the effort should be expanded to additional areas, and a decision point on whether to proceed with survey efforts in additional areas. The detailed scope of the later phases of the work could be more fully defined at this later point.

The objective is for states to provide in the work plan an overall description of the scope of activities to be performed using formula grant funds at a level of detail commensurate with how fully defined the activity is at this point and given the state's experience in performing the activities in question. For those activities that are generally scheduled later in the grant period of performance and may not be as fully defined at this point, or are subject to further refinement based on the results from activities that will be completed earlier, the level of detail would not be expected to be as specific, but milestones may be identified as to the preliminary schedule for developing a more detailed scope for the activity and/or specifications for procurement that will be needed.

**Q. Given that work plans are to provide a description of activities and preliminary schedule for the entire period of performance of the grant, will this mean that states will constantly need to rewrite their work plans as they make changes in activities to address new information or conditions? This will greatly increase administrative costs and hamper efforts to be flexible and address new conditions as they arise.**

- It is intended for the states to have the flexibility as they implement their programs to make changes in their planned activities, such as adjusting the priority of addressing specific wells or groups of wells, or responding as needed if wells are identified to have caused more extensive soil, surface water, or groundwater contamination. All such changes do not necessarily require states to submit revised work plans for review and approval, and if a state is responding to an emergency situation, the state is not expected to wait for written approval from the Department. It is important, however, for states to keep the Department informed of such modifications in the planned activities through its regular communications with the state's Orphaned Wells Program Office and Interior Business Center points of contact, and its narrative quarterly technical performance reports and significant developments report as described in Sections VIII.A and VIII.C of the guidance.

**Q. The formula guidance requires states to identify and factor into their project prioritization, orphaned wells within 0.5 miles of communities of color, low-income communities, and Tribal and Indigenous communities. If a state has a prioritization process established by law or regulation or is otherwise inflexible to adjustment, how does the Department expect states to address this requirement?**

- The Department is providing states flexibility to work within each state’s existing legal and regulatory frameworks to meet this requirement, and states should communicate with the appropriate Orphaned Wells Program Office contacts if there are questions regarding unique circumstances or conditions.

**Q: Is the Department’s methane emissions guidelines (protocol) the only approved methodology to meet the formula grant’s methane detection and quantification requirement?**

- The approved (as of June 2023) American Carbon Registry protocol for measuring methane from orphaned oil and gas wells is a suitable alternative protocol. It can be found here: <https://americancarbonregistry.org/carbon-accounting/standards-methodologies/plugging-orphaned-oil-and-gas-wells/acr-oog-v1-0.pdf>. The Department intends for its protocol to be the minimum standard, and if a state has an alternative, more rigorous methodology, the state should identify the methodology in the state’s formula grant application and describe how it compares to the Department’s protocol.

**Q. Are states expected to ensure that formula grant funds are not used to plug, remediate, or reclaim orphaned wells with an identifiable responsible party capable of plugging the well?**

- The Department expects states to follow all applicable state laws and regulations intended to prevent solvent, financially responsible parties capable of plugging wells from avoiding responsibility and passing on the financial burden of plugging, remediating, and reclaiming wells to U.S. taxpayers. Grant funding should not be used where there is an identifiable financially responsible party capable of completing the plugging. Furthermore, the Bipartisan Infrastructure Law requires states certify that available financial assurance instruments will be used by the states in conjunction with the formula grant program. The Department will work with states to determine the best way to meet the Bipartisan Infrastructure Law’s requirements while complying with applicable state law or programmatic needs.