

CHAPTER 2-140

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

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2-140-00 What is the purpose of this chapter?

This chapter describes our procedures to ensure that states and other governmental entities have the opportunity to review and comment on proposed financial assistance agreements before we, the Office of Surface Mining Reclamation and Enforcement (OSM), decide whether to approve them.

2-140-10 What is the purpose of Executive Order 12372?

- A. Executive Order (E.O.) 12372, *Intergovernmental Review of Federal Programs*, requires Federal agencies to provide state officials the opportunity to review and comment on proposed Federal financial assistance activities. Federal agencies must consider state comments before making a final decision.
- B. E.O. 12372 allows a state to establish an intergovernmental review system. The state must establish it in an official act of the state. The Office of Management and Budget (OMB) must certify that the state's system is in accordance with OMB directives. A state system may select any Federal program or activity for review.
- C. The Department of the Interior's rule implementing E.O. 12372 is published in 43 CFR Part 9, *Intergovernmental Review of Department of the Interior Programs and Activities*. This rule is also incorporated in the Departmental Manual, Part 511, *Coordination with State and Local Governments*. These procedures apply to all of our financial assistance agreements.

2-140-20 Who must follow intergovernmental review requirements?

- A. Indian tribes are not required to submit applications to state intergovernmental review clearinghouses for review.
- B. All other applicants for financial assistance must ensure that their applications meet their state's intergovernmental review requirements. If your state has an intergovernmental review process, and if they have chosen to review the OSM program you are applying for, you must submit your application for their review.

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- C. Applications subject to intergovernmental review include new assistance agreements, and also amendments to increase funding for current assistance agreements.

2-140-30 What is the process for submitting applications to a state intergovernmental review system?

- A. You must submit your application for a new assistance agreement to the state Single Point of Contact (SPOC) at least 60 days before the planned award date. You must submit a continuation assistance application to the SPOC at least 30 days before the planned award date.
 - 1. For the purposes of intergovernmental review, OSM considers regulatory and Abandoned Mine Land (AML) grant applications to be continuation grants. AML grant applications are not considered new grants because they do not normally include information on specific proposed reclamation projects.
 - 2. To assure proper timing of reviews by the state system, you should indicate in your application (on the [SF 424](#) form, item 8, Type of Application) whether the application is for a continuation grant, or a new assistance agreement.
- B. You must provide evidence to us in your application that you provided the state system opportunity to comment on your proposal. You can show this on the SF 424 in Item 16, "Is Application Subject to Review by State E.O. 12372 Process?" and also in Item 3, "Date Received by State" and "State Application Identifier."

2-140-40 What must you and we do if a state review process makes a recommendation on your application?

- A. The state SPOC may send state process recommendations to us or to you. If you receive any recommendations or comments about your application from your state SPOC, either before or after we have awarded your agreement, you must send them immediately to the OSM office which received your application.
- B. We must make efforts to accommodate intergovernmental concerns by one of the following actions.
 - 1. Accept the recommendation.
 - 2. Reach a mutually agreeable solution with the state process.
 - 3. Provide the state SPOC with a written explanation of our decision before we take any other action on the proposal.

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1-140-50 What if your state does not have a review process or has not selected our program for review?

- A. In the absence of E.O. 12372 requirements, the consultation provisions of the Intergovernmental Cooperation Act of 1968 apply to your application. The Act requires us to notify affected state, area-wide and regional agencies, and local governments directly of our proposed actions. Our awarding office must send notices of intent which include a description of the proposed financial assistance, a due date for responses which allows at least 60 days for a new award or 30 days for a continuation, and how to contact us.

- B. Under this Act, we are only required to consider the recommendations of intergovernmental agencies and officials. We are not required to accommodate their concerns, explain our decision, or provide prior notifications of other actions. However, we will try to work with all interested parties to respond to their concerns.