

CHAPTER 2-200 PROPERTY

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2-200-00 What is property?

Property is any tangible item which is acquired or held through an assistance agreement. Real property is land, including buildings, and improvements fixed on the land. Personal property is all other property except real property.

2-200-10 What does this chapter do?

This chapter explains the policy and procedures for the use, management and disposition of real property, equipment and supplies purchased by you, the recipient, under an assistance agreement from us, the Office of Surface Mining Reclamation and Enforcement (OSM).

2-200-20 Where do these rules come from?

Requirements for the use, management and disposal of real property, supplies and equipment acquired under your assistance agreement are established in the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, known as the *Grants Common Rule*, at 43 CFR 12, Subpart C.

2-200-30 What is equipment?

We define equipment as nonexpendable personal property with a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Alternatively, you may use your own definition of equipment as long as your definition includes all property which would be considered equipment under our definition.

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2-200-40 Who holds title to equipment acquired under an assistance agreement?

Title to equipment you acquire under an assistance agreement will vest in your organization upon acquisition, subject to the obligations and conditions in this chapter.

2-200-50 How must states manage equipment?

States will use, manage, and dispose of equipment acquired under an assistance agreement in accordance with state laws and procedures.

2-200-60 How must recipients other than states manage equipment?

- A. If you are not a state government, you must follow these requirements about using equipment.
 - 1. You must use equipment in the program or project for which you acquired it as long as needed. This applies whether or not the program continues to be supported by Federal funds. When you no longer need the equipment for the original program, you may use the equipment in other activities currently or previously supported by a Federal agency.
 - 2. You may also make equipment available for use on other programs or projects currently or previously supported by the Federal government. That use must not interfere with the work on the program for which the equipment was acquired. You must give other programs or projects supported by OSM first preference for other use. You should consider charging user fees if appropriate.
 - 3. You must not use equipment acquired with assistance funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically authorized by Federal statute.
- B. Your procedures for managing equipment must meet the following minimum requirements.
 - 1. You must maintain property records that include:
 - a. A description of the property
 - b. A serial number or other identification number
 - c. The source of the property
 - d. Who holds title
 - e. The acquisition date
 - f. Cost of the property
 - g. Percentage of Federal participation in the cost of the property
 - h. The location, use and condition of the property
 - i. Disposition data including the date of disposal and the sale price of the property.

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2. You must take a physical inventory of property and reconcile the results with your property records at least once every two years. You must provide us a copy of the results of your physical inventory and reconciliation.
 3. You must develop a control system to ensure adequate safeguards to prevent loss, damage or theft of the property. You must investigate any loss, damage or theft which occurs, and provide the results of your investigation to us.
 4. You must develop adequate maintenance procedures to keep the property in good condition.
- C. You must dispose of original or replacement equipment when you no longer need it for the original program or for other activities currently or previously supported by a Federal agency. You must dispose of the equipment according to the following rules. You must inform us of the disposition action you will take.
1. You may keep, sell, or otherwise dispose of Items of equipment with a current per unit fair market value of less than \$5,000 with no further obligation to us.
 2. You may keep or sell items of equipment with a current per unit fair market value of \$5,000 or more after compensating us. To calculate the amount to pay us, apply our percent share of the original cost to the current fair market value of the equipment.
 3. If you sell equipment, you must establish proper sales procedures to ensure the highest possible return.
 4. If you fail to take appropriate or timely disposition actions, we may direct you to take the appropriate actions.
- D. When you replace equipment which is no longer serviceable or efficient, you may use the old equipment as a trade-in, or sell it and use the proceeds to purchase replacement equipment. You must meet the following requirements.
1. The replacement equipment must serve the same function as the original equipment. However, the equipment does not necessarily have to be of the same type, grade or quality.
 2. If you trade in or sell the equipment, the value credited for it must be comparable to its fair market value.
 3. The sale of the equipment and purchase of its replacement must occur close enough in time to show that the two events are related. However, you may purchase the replacement equipment before you sell the original equipment.

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4. Replacing equipment in this way is not a disposition of the equipment. You are not required to compensate OSM for the Federal share of the equipment at the time of replacement. Instead, the Federal share of the original equipment will be transferred to the replacement equipment with an appropriate adjustment as follows.
 - a. Apply the percentage of Federal share in the cost of the old equipment to the proceeds from its sale or the amount credited for trade-in to set a dollar amount for Federal share of the proceeds.
 - b. Use the dollar amount of the Federal share of the proceeds to reduce the Federal share of the cost of the replacement.
 - c. If the Federal share of the proceeds is greater than the Federal share of the cost of the replacement, you may use the excess funds to reduce the Federal share of the grant. Otherwise you must return the excess funds to OSM.

2-200-70 How must you manage any Federally-owned equipment we provide to you?

If we provide any Federally-owned equipment to you, the following rules apply.

- A. Title to the equipment will remain vested in the Federal government.
- B. You must manage the equipment under the same requirements as equipment you acquired through the assistance agreement.
- C. You must complete an inventory list annually and send it to the awarding OSM office. You may use the optional [OSM 60](#) inventory form, or list the inventory in any format which gives us enough information to determine the status of the equipment.
- D. When your project no longer needs the equipment, you must request disposition instructions from OSM.

2-200-80 When does OSM have the right to transfer title to equipment?

OSM reserves the right to transfer title of any equipment acquired through an OSM assistance agreement to the Federal government or to a third party named by OSM. Such transfers will be subject to the following requirements.

- A. We must identify the specific piece of property to you in writing. We will give you this notice in the award document or as soon as possible after we approve the equipment purchase so that you can note this restriction in your property management system.
- B. We will issue disposition instructions within 120 calendar days of the end of the assistance

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agreement in which you acquired the equipment. If we fail to issue disposition instructions in this period, you may follow normal equipment disposition procedures.

- C. When we transfer title to the equipment, we will pay you an amount calculated by applying the percentage of your participation in the purchase to the current fair market value of the property.

2-200-90 How must you manage supplies?

Supplies are items of personal property which do not meet the criteria for equipment. Items which have a useful life of less than one year or cost less than \$5,000 per unit are supplies. You must meet the following requirements when managing supplies.

- A. Title to supplies acquired under an assistance agreement will vest to you upon acquisition.
- B. You must purchase supplies only in amounts you reasonably expect to be needed for the period of the OSM-funded assistance agreement.
- C. Although you do not have to account for supplies as you do for equipment, you must maintain adequate records to document the purchase, receipt, costing and use of supplies in accordance with good management practices.
- D. You may have unused supplies left at the end of the award. If their total fair market value is over \$5,000 and you do not need the supplies for other Federally-sponsored programs or projects, you must compensate us for the Federal share. To calculate the amount to pay OSM, apply our percentage share in the original cost to the fair market value of the supplies.

2-200-100 Can you acquire land with OSM funds?

Yes, you may use OSM assistance funds to acquire land or other real property. You must meet the following requirements.

- A. You must have our specific approval before you spend any funds to acquire real property. Our approval decision will be made by the OSM official who is authorized to award your assistance agreement.
- B. You will hold title to all real property. Title vests in your organization upon acquisition. You must not encumber your title or interests in real property.
- C. If you are acquiring real property for use by your program, see Chapter [3-150](#), *Facilities Purchased or Constructed by State and Local Governments*.
- D. If you are acquiring land for reclamation using AML or Watershed Cooperative Agreement funds, you must follow the program-specific rules below.

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2-200-110 What specific rules apply to real property acquired land with AML grant funds?

In most cases, you do not need to acquire land in order to reclaim it. We do not encourage the purchase of sites with coal or coal refuse because that may result in your having to provide for long-term water treatment. However, on rare occasions you may find it necessary to acquire land in order to reclaim it. You must meet the following requirements to acquire land.

- A. The land to be acquired must be adversely affected by past coal mining practices and acquisition must be necessary for successful reclamation. The land must also serve recreation, historic, or conservation purposes after reclamation. It must also have permanent facilities for reclamation of mining impacts or preventing future damage to the land, such as a relocated stream channel, or diversion ditch. You may acquire coal refuse disposal sites, including the coal refuse.
- B. We must agree that the land acquisition is necessary for reclamation, and specifically approve the purchase in advance.
- C. You must use funds from sources other than AML grants to pay at least 10% of the acquisition cost of the land.
- D. You must follow the provisions in sections 407 and 409 of SMCRA, OSM regulations at 30 CFR Part 879, and the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (P.L. 91-646) for the acquisition, use and disposition of the land.

2-200-120 What specific rules apply to real property acquired with Watershed Cooperative Agreement funds?

Sites for the construction of AMD treatment facilities are usually on private lands. In most cases, you can get the landowner's permission to use the property for AMD treatment. Often, you may get an easement from the landowner for perpetual use of the property for the treatment facility. However, on rare occasions the landowner will not agree to install the treatment facility, and you may have to acquire the land in order to do your project. The owner may want to transfer ownership of the project site to you at fair market value or some lower price.

- A. You must demonstrate to us that acquisition of the property is necessary to achieve the goals of your project, and that other options such as easements or a different location are not viable.
- B. You may use up to 50% of the amount of our watershed cooperative agreement funding for the purchase of the land, and related expenses.
- C. You must pay at least 10% of the cost of the property with funds from sources other than the AML Fund.
- D. You must follow the provisions of Section 407 of SMCRA and 30 CFR Part 879.

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- E. The future property owner must be your organization, another approved 501(c)(3) non-profit group, or the state.
- F. OSM's contribution to the purchase price of the property must not exceed the appraised fair market value.
- G. The property appraisal should be prepared by a state-certified real estate appraiser. The appraiser should be certified for general property appraisals, not just for residential properties.
- H. You must send the appraisal through our Clean Streams Coordinator to the regional office appraiser for review. The regional appraiser must accept the appraisal before you spend watershed cooperative agreement funds to purchase the property.
- H. The deed of transfer must specify that the property will be used for the purposes of the project and/or recreation, conservation, or environmental education purposes in perpetuity. If the original owner organization dissolves or is unable to continue managing the property as intended, the property must be transferred to another non-profit organization with similar goals. The new owner organization must continue to operate, and maintain the property as appropriate.
- I. The deed of transfer must specify that if the owner determines the property is no longer needed for the purposes stated in the deed, the owner will notify and consult with OSM for appropriate disposition instructions.

2-200-130 How must you manage real property?

- A. You can use real property acquired in whole or in part with OSM funds for the originally authorized purposes as long as it is needed for those purposes. This rule applies even if the program or project is no longer supported by Federal funds.
- B. When you no longer need the real property for the original purpose, you must request disposition instructions from us. We will give you disposition instructions using one of the following options.
 - 1. You may keep title to the property after compensating us. To calculate the amount to pay us, apply OSM's percentage share in the original cost to the current fair market value of the property.
 - 2. You may sell the property and compensate us. To calculate the amount to pay us, deduct your actual and reasonable selling and fix-up expenses from the proceeds of the sale of the property. Apply OSM's percentage share in the original cost to the net proceeds. You must use sales procedures that provide for as much competition as practicable, and result in the highest possible return.

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3. You may transfer title to us or to a third party we name or approve. We will pay you compensation calculated by applying your percent share in the original cost to the current fair market value of the property.