

FINAL STREAM Act FAQs

Current FAQs (on OSMRE's IIJA webpage) with revisions.

The Consolidated Appropriations Act, 2023, amended section 40701 of the Infrastructure Investment and Jobs Act (IIJA) to authorize eligible States and Tribes to deposit up to 30 percent of their annual IIJA abandoned mine land (AML) grant amount in a long-term AML reclamation fund established under State or Tribal law. 30 U.S.C. § 1231a(c)(2). This amendment is commonly referred to as the STREAM Act.

1. Pursuant to the STREAM Act, may eligible States and Tribes place a portion of their IIJA grant funds into their fee-based acid mine drainage (AMD) set aside accounts?

A State or Tribe may choose to deposit up to 30 percent of their IIJA AML grant in an already existing fee-based AMD set-aside account if consistent with State/Tribal law and the applicable reclamation plan. States and Tribes may also choose to establish a long-term STREAM AML reclamation fund that is separate from any existing fee-based AMD set-aside account, given the different funding source and purposes for which the STREAM Act funds can be used. Regardless of whether a State or Tribe sets up a separate long-term AML reclamation fund or uses an existing fee-based AMD set-aside account, the State or Tribe must ensure that it has adequate fiscal, accounting, and internal control measures in place to separately monitor and track STREAM Act and fee-based AMD set-aside funds.

States and Tribes must demonstrate in their STREAM Act fund request that their financial management system is capable of tracing STREAM Act funds “to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.” 2 C.F.R. § 200.302(a). At a minimum, this will include ensuring that STREAM Act funds and interest attributed to those funds can be accounted for, tracked, and used only for one of the three purposes set forth in 30 U.S.C. § 1231a(c)(2)(A)(i)-(iii).

2. If IIJA grant funds are deposited into a long-term reclamation fund separate from an already existing fee-based AMD set-aside account, is the long-term reclamation fund required to receive interest in the same way that the fee-based AMD set-aside account does?

Yes. Long-term AML reclamation funds established pursuant to the STREAM Act and fee-based AMD set-aside accounts established pursuant to section 402(g)(6) of the Surface Mining Control Reclamation and Enforcement Act of 1977 (SMCRA) are both required to be deposited in those accounts “together with all interest earned on the amounts.” 30 U.S.C. § 1231a(c)(2)(A) and § 1232(g)(6)(A).

3. Will AML projects funded by a State's or Tribe's long-term AML reclamation fund be subject to National Environmental Policy Act (NEPA) and Authorization to Proceed (ATP) requirements?

An AML project that is exclusively funded by STREAM Act funds—like projects exclusively funded by fee-based AMD set-aside funds—is not subject to NEPA or ATP requirements but must be entered into e-AMLIS and included in the annual grant reports and Annual Evaluation report.

However, an AML project that is funded by combining STREAM Act funds with another funding source, such as IIJA AML, AML fee-based, or Abandoned Mine Land Economic Revitalization (AMLER) funds, is subject to NEPA and ATP requirements. These projects must also be entered into e-AMLIS and included in the annual grant reports and Annual Evaluation Report.

4. Will AML projects funded by a State's or Tribe's long-term AML reclamation fund be subject to the Build America, Buy America Act (BABA) and the Davis-Bacon Act?

Yes, the IIJA requires all projects that will be assisted in whole or in part by funding made available under the IIJA to comply with BABA and the Davis-Bacon Act. Please refer to the latest version of the *Infrastructure Investment and Jobs Act Abandoned Mine Land Grant Implementation* for additional information on BABA and the Davis-Bacon Act.

5. Are States and Tribes required to report on the status of their IIJA long-term AML reclamation fund once established?

Yes, the STREAM Act requires annual reporting on the status and balance of long-term AML reclamation funds for the life of the fund. Refer to 30 U.S.C. § 1231a(c)(2)(B) and the STREAM Act guidance for more information on reporting requirements.

6. The STREAM Act was enacted in December 2022. Can eligible States and Tribes submit a grant amendment for their FY 2022 grant funds to place up to 30% into a long-term AML reclamation fund to earn interest?

Yes, eligible States and Tribes may submit a FY 2022 grant amendment request, which, if approved, would allow them to deposit up to 30 percent of their FY 2022 IIJA grant into a long-term AML reclamation fund. However, to make such a deposit, eligible States and Tribes must have sufficient statutory authority and a long-term AML reclamation fund that is consistent with the State's or Tribe's existing OSMRE-approved AML reclamation plan. States and Tribes should submit with their grant amendment request a letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer that demonstrates that the State or Tribe has the necessary statutory authority under State or Tribal law to deposit the funds into a long-term AML reclamation fund and to expend the funds in compliance with the STREAM Act, the IIJA, SMCRA, and their approved AML reclamation plan. Refer to the STREAM Act guidance for additional information on STREAM Act fund requests.

Additional FAQs

7. If I deposit my STREAM Act funds into my existing fee-based AMD set-aside account authorized under section 402(g)(6) of SMCRA (as previously approved by OSMRE in my AML program), how may these funds be used?

This is a fact specific inquiry that will depend on the State's or Tribe's existing statutory authority. If the State's or Tribe's Attorney General or the reclamation agency's chief legal officer reasonably determines that existing law provides sufficient authority to place these funds in an existing AMD set-aside account for the expanded uses contemplated under the STREAM Act, then the State/Tribe may use all of the STREAM Act funds (and interest earned on STREAM Act funds) for all the authorized uses (i.e., coal mine subsidence, coal mine fires, and AMD abatement for both qualified and non-qualified hydrologic units). Funds in the existing AMD set-aside account from fee-based collections (and interest earned on those funds) can only be used for AMD abatement in qualified hydrologic units as specified in 30 U.S.C. § 1232(g)(6).

However, if OSMRE, as informed by information provided by the State or Tribal legal officer, concludes that a State or Tribe's existing statutory authority restricts the use of all funds placed in the existing set-aside to only AMD abatement in qualified hydrologic units, then STREAM Act funds placed in an existing AMD set-aside account could only be used for AMD abatement in qualified hydrologic units as specified in 30 U.S.C. § 1232(g)(6). Under this scenario, the State/Tribe would have the option to obtain

the requisite State/Tribal statutory authority and/or amend its AML Reclamation Plan to facilitate the broader uses of the STREAM Act funds as prescribed in 30 U.S.C. § 1231a(c)(2).

8. Do I have to request the entire 30% in each annual IJA grant application?

No. States and Tribes have the flexibility to determine what percentage of each annual grant amount will meet their needs, up to 30% of their annual IJA grant funding.

9. Why does my grant award include new terms and conditions regarding STREAM Act funds?

The new terms and conditions describe the legal requirement that adequate financial management systems and accounting controls must be in place to monitor and track STREAM Act funds.

10. Are States and Tribes required to update their AML Reclamation Plans before they can begin depositing IJA grant funds into a long-term AML reclamation fund?

It depends. It is possible that a State or Tribe currently has sufficient authority pursuant to State/Tribal law(s) and its already-approved reclamation plan to allow that State or Tribe to deposit and expend funds for the expanded purposes set forth in the STREAM Act without further amendment. A State or Tribe that wants to put money in a long-term AML set-aside account should submit with its grant application or grant amendment request a letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer that demonstrates that the State or Tribe has the necessary statutory authority under State or Tribal law, whether existing or newly enacted, to deposit the funds into a long-term AML reclamation fund and to expend the funds in compliance with the STREAM Act, the IJA, SMCRA, and their approved AML reclamation plan. Refer to the STREAM Act guidance for additional information on STREAM Act fund requests.

11. What is the process for submitting the letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer?

The letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer must be uploaded into GrantSolutions along with the grant application or grant amendment request. In addition, if this is the first time developing such documentation, we encourage you to provide a copy of this letter/legal opinion to your regional OSMRE office.

12. What information should be included in the letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer?

States and Tribes should submit with their grant application or grant amendment request a letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer that demonstrates that the State or Tribe has the necessary statutory authority under State or Tribal law to deposit the funds into a long-term AML reclamation fund and to expend the funds in compliance with the STREAM Act, the IJA, SMCRA, and their approved AML reclamation plan.

States and Tribes should include the following in the letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer:

- An analysis with specific citations to State/Tribal statutes, regulations, and an approved reclamation plan, as applicable, that demonstrate the ability to establish a long-term AML reclamation fund or to deposit IJA AML grant funds in an existing fee-based AMD set-aside account. If an existing fee-based AMD set-aside account will be used, the letter should

demonstrate, pursuant to 2 C.F.R. § 200.302(a), how STREAM Act funds will be monitored, tracked, and generally accounted for separate from fee-based monies; and

- An analysis with specific citations to State/Tribal statutes, regulations, and an approved reclamation plan, as applicable, that demonstrate the ability to expend grant monies to address AMD, subsidence, and mine fires with IIJA AML grant funds set-aside pursuant to the STREAM Act. If an existing fee-based AMD set-aside account will be used, the letter should demonstrate how STREAM Act funds will be monitored, traced, and generally accounted to ensure that fee-based monies are only spent on AMD projects within qualified hydrologic units.

13. Are States and Tribes required to report on the status of long-term AML reclamation funds beyond the IIJA grant period of performance?

Yes. States and Tribes must annually document and report the status and balance of the long-term AML reclamation fund amounts for the life of the long-term AML reclamation fund. 30 U.S.C. § 1231a(c)(2)(B).

Although the period of performance for a IIJA AML grant is five years, with an option for a one-time no-cost extension of up to one year, subject to OSMRE's review and approval, eligible States and Tribes must report annually on the status of each long-term AML reclamation fund (projects funded, fund expenditures and the balance of available funds) until the funds are totally expended.

All AML projects, including those that are exclusively funded using IIJA long-term AML reclamation funds, must be entered into e-AMLIS and included in Annual Evaluation Reports and annual grant reports. For specifics related to e-AMLIS data entry, see OSMRE's Directive AML-1. For information related to annual reporting, see OSMRE's Directive AML-22.

14. Will a fund type designation for funds set aside under the STREAM Act be added in eAMLIS to separate it from existing funds designations of SGA, IIJA, MLR, and AMA?

Yes. By June 2024, e-AMLIS will incorporate a new funding designation that will allow for the tracking of AML problems reclaimed using the STREAM Act funding source.

15. Can OSMRE use data in e-AMLIS to track projects funded through STREAM Act set aside accounts?

Yes. OSMRE will be able to use data from e-AMLIS once the new code is established by June 2024. While e-AMLIS will house data for completed costs of AML problems reclaimed with STREAM Act funds, other related project costs such as procurement actions and project engineering and design costs are not captured in e-AMLIS. Therefore, it will be necessary to fulfill the reporting requirements on the use of the STREAM Act funds to account for all project costs.

16. Does the STREAM Act or the STREAM Act guidance place a time limit on the expenditure of IIJA AML reclamation grant funds deposited into a long-term AML reclamation fund?

No. Neither the STREAM Act nor the STREAM Act guidance place any time limits on the expenditure of those funds. 30 U.S.C. § 1231a(c)(2)(C)(i) -(ii) specifically provides that amounts retained pursuant to the STREAM Act are not subject to the redistribution of unused funds under 30 U.S.C. § 1231a(4)(B) or any other limitation that may be placed on annual IIJA AML grant funds.