

FINAL Guidance for Implementation of the STREAM Act's Long Term AML Reclamation Fund

I. OVERVIEW

The Consolidated Appropriations Act, 2023, included an amendment to section 40701 of the Infrastructure Investment and Jobs Act (IIJA) that authorized eligible States and Tribes¹ 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). Money in this fund (together with all interest earned on the amounts) may be expended for:

- The abatement of the causes and the treatment of the effects of acid mine drainage (AMD) resulting from coal mining practices, including for the costs of building, operating, maintaining, and rehabilitating AMD treatment systems;
- The prevention, abatement, and control of subsidence; or
- The prevention, abatement, and control of coal mine fires.

This amendment is commonly referred to as the STREAM Act, and it affords eligible States and Tribes the opportunity to address known long-term AML problems left unreclaimed due to the scale or cost of the remedial project. Additionally, the STREAM Act provides States and Tribes with the funding necessary to respond to newly found or worsening long-term AML problems.

For each fiscal year (FY), including FY22 and FY23, eligible States and Tribes may submit grant applications or grant amendments that include a request to deposit up to 30 percent of their annual IIJA AML grant amount into a long-term AML reclamation fund. We strongly encourage States and Tribes to submit such requests as soon as possible to ensure interest earned on these funds is maximized, which will increase the amount of funding available for future AML projects.

The purpose of this guidance is to provide State and Tribal AML Programs with information concerning the implementation of the STREAM Act, including what constitutes 30 percent of an annual IIJA AML grant; what may be considered a long-term AML reclamation fund; how to request STREAM Act funds; reporting requirements; performance measurements; and appropriate use of STREAM Act funds. In addition, this guidance clarifies how STREAM Act funds must be managed in relation to fee-based AMD set-aside funds.²

¹ See 30 U.S.C. § 1231a(b)(2)(A)-(C) (identifying those States and Tribes eligible to receive IIJA AML grants).

² Section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) authorizes uncertified States and Tribes to set aside certain non-IIJA fee-based AML grant funds to be used for AMD abatement and treatment projects that are part of a qualified hydrologic unit. 30 U.S.C. § 1232(g)(6)(A). As noted above, STREAM Act funds may also be used for AMD treatment projects (regardless of whether the project is part of a qualified hydrologic unit), as well as subsidence remediation and coal mine fire projects.

II. THIRTY PERCENT OF ANNUAL IJJA GRANTS

Pursuant to the STREAM Act, States and Tribes eligible to receive IJJA grants are authorized to place up to 30 percent of the “total amount of a grant made annually” under section 40701(b)(1) of the IJJA in a “long-term abandoned mine land reclamation fund established under State law, from which amounts (together with all interest earned on the amounts) are expended by the State or Tribe” 30 U.S.C. § 1231a(c)(2)(A).

IJJA AML grants are awarded to eligible State and Tribal AML Programs on an annual basis and adjustments will be made to these distributions as necessary to achieve the objectives of the program (e.g., if the number of eligible States and Tribes increases or decreases). Thus, while the percentage of annual IJJA AML grant funds available for deposit into a long-term AML reclamation fund will remain fixed (i.e., up to 30 percent), the actual dollar amount available for deposit will depend on the IJJA grant amount each eligible State or Tribe receives each fiscal year. For additional information on IJJA AML Grants, refer to the latest version of the *Guidance on the Infrastructure Investment and Jobs Act Abandoned Mine Land Grant Implementation*.

Monies provided to eligible States and Tribes pursuant to section 40701(g) of the IJJA “for the purpose of making amendments to the inventory maintained under section 403(c) of [SMCRA],” known as e-AMLIS, are not subject to the STREAM Act and are therefore not included when calculating how much may be deposited into a long-term AML reclamation fund. 30 U.S.C. § 1231a(g).

III. LONG-TERM AML RECLAMATION FUND REQUIREMENT

As noted, States and Tribes, if they so choose, may deposit up to 30 percent of their annual IJJA grant in a “long-term [AML] reclamation fund established under State [or Tribal] law.” 30 U.S.C. § 1231a(c)(2)(A). Given the different funding source and purposes for which the STREAM Act funds can be used, many States and Tribes may choose to establish a long-term AML reclamation fund that is separate from any existing fee-based AMD set-aside account. However, a State or Tribe may also choose to deposit up to 30 percent of their IJJA AML grant in an already existing fee-based AMD set-aside account if consistent with State/Tribal law and the applicable reclamation plan. 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 monitor and track STREAM Act funds separately from 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).³ 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 the 30 U.S.C. § 1231a(c)(2)(A)(i)-(iii).

IV. STREAM ACT FUNDS REQUESTS

States and Tribes should submit with their grant application/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 IJJA, SMCRA, and the State's or Tribe's approved AML reclamation plan.

To deposit up to 30 percent of an annual IJJA grant (including funds received under the IJJA in FY22 and FY23) into a long-term AML reclamation fund, 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. Depending on the specifics of the applicable State or Tribal law(s) and reclamation plan, it is possible that both the State/Tribal law(s) and an already-approved reclamation plan may contain sufficient language to allow a State or Tribe to set-aside and expend funds for the expanded purposes set forth in the STREAM Act without further amendment.

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 IJJA 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 IJJA 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, tracked, and generally accounted to ensure that fee-based monies are only spent on AMD projects within qualified hydrologic units.

³ OSMRE will include, at a minimum, a term and condition in the grant award to this effect.

If a State or Tribe elects not to provide a legal opinion as described above, OSMRE, in consultation with the Department of the Interior's (DOI) Office of the Solicitor, will determine whether the State or Tribe has the necessary statutory authority and reclamation plan provisions in place before OSMRE can process the relevant grant request. Because States and Tribes are in the best position to quickly ascertain the relevant authorities, whether existing or newly enacted, OSMRE strongly recommends that States and Tribes submit the letter/legal opinion.

If a State or Tribe lacks the appropriate statutory authority or if its current approved reclamation plan would not allow for STREAM Act funds to be deposited into a long-term AML reclamation fund or be expended in accordance with the STREAM Act, OSMRE will consult with DOI's Office of the Solicitor to determine the necessary steps for such deposits or expenditures, including, potentially, notification under 30 C.F.R. § 884.15(b) of the need for an amendment to an existing reclamation plan.

The letter/legal opinion from the State's or Tribe's Attorney General or the reclamation agency's chief legal officer discussed above 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.

When requesting STREAM Act funds in a grant application or grant amendment, States or Tribes should use the new subaccount – IIJA Fund Subaccount IL #24.

Fund type description:

- IL Funds authorized by section 40701 of the IIJA that are available to eligible States and Tribes.

Subaccount number definition:

24. IIJA Long Term AML Reclamation Fund

These costs are authorized by the Consolidated Appropriations Act, 2023, which amended the IIJA by authorizing eligible States and Tribes to deposit up to 30 percent of their annual IIJA AML grant amount in a long-term AML reclamation fund established under State law. Moneys in the long-term AML reclamation fund may only be used for:

- The abatement of the causes and the treatment of the effects of acid mine drainage resulting from coal mining practices, including building, operating, maintaining, and rehabilitating acid mine drainage treatment resulting from coal mining practices;
- The prevention, abatement, and control of subsidence; or
- The prevention, abatement, and control of coal mine fires.

The request for STREAM Act funds will be processed once a written determination is made by the State's or Tribe's Attorney General, the reclamation agency's chief legal officer, or DOI's Office of the Solicitor confirming the State's or Tribe's authority to set-aside and expend funds for the expanded purposes set forth in the STREAM Act without further changes to their statutes, regulations, or AML reclamation plan. A copy of the letter/legal opinion may be used to support each future grant request for STREAM Act funds if it is included as part of your grant application or grant amendment request and uploaded into GrantSolutions.

V. REPORTING REQUIREMENTS

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

VI. PERFORMANCE MEASUREMENTS

To support OSMRE's efforts to report to Congress as required by section 40701(d)(3) of the IJA and to enhance transparency regarding the use of these funds, you are encouraged to report to OSMRE the benefits and performance measures of AML projects reclaimed using STREAM Act funds. 30 U.S.C. § 1231(a)(d)(3). Please refer to the latest version of the *Guidance on the Infrastructure Investment and Jobs Act Abandoned Mine Land Grant Implementation* for additional information on reporting.

VII. ADDITIONAL FEDERAL REQUIREMENTS

National Environmental Policy Act (NEPA)

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 IJA AML, AML fee-based, or Abandoned Mine Land Economic Revitalization (AMLER) funds, is subject to NEPA and ATP

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requirements. These projects must also be entered into e-AMLIS and included in the annual grant reports and Annual Evaluation Report.

Build America, Buy America Act (BABA) and the Davis-Bacon Act

All STREAM Act-funded AML projects are subject to the 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.