

[H.R. 1644, Supporting Transparent Regulatory and Environmental Actions in Mining \(STREAM\) Act](#)

FLOOR SITUATION

On Tuesday, January 12, 2016, the House will consider [H.R. 1644](#), *the Supporting Transparent Regulatory and Environmental Actions in Mining (STREAM) Act*, under a [structured rule](#). H.R. 1644 was introduced on March 26, 2015 by Rep. Alex Mooney (R-WV) and was referred to the Committee on Natural Resources, which ordered the bill reported, as amended, by a vote of 23 to 12 on September 10, 2015.

SUMMARY

H.R. 1644 requires the Secretary of the Department of the Interior (DOI) to make publically-available all scientific products used by its Office of Surface Mining Reclamation and Enforcement (OSMRE) in developing any rule, environmental analysis, economic assessment, policy, or guidance pursuant to the Surface Mining Control and Reclamation Act of 1977 at least 90 days prior to its publication.

The bill also requires the disclosure of the raw data used for federally-funded scientific products and provides for delays in the publication of rules and related products when such information is not made available within the prescribed period. The bill includes an exception to the provision providing for delayed publication of rules if the delay will pose an imminent and severe threat to human life. The bill also excludes the disclosure of raw data that would: reveal information protected by copyright; contain personally identifiable information, sensitive intellectual property, trade secrets, or business-sensitive information; or would violate health privacy laws.

The bill also requires the Secretary, within 90 days of enactment, to enter into an arrangement with the National Academy of Sciences (NAS) to conduct a comprehensive study of the regulatory effectiveness of the Stream Buffer Zone (SBZ) rule in protecting streams through the use of such zones. The NAS must submit the results of the study to Congress within two years of the arrangement. The bill prohibits DOI from issuing any final or other regulation regarding the [Stream Protection Rule](#) or relating to stream buffer zones until one year after the NAS study is submitted to Congress. The bill authorizes the appropriation of \$1 million for each of fiscal years 2016 and 2017 to carry out the required study.

BACKGROUND

On July 27, 2015, the DOI's OSMRE published a proposed rule (the Stream Protection Rule), which would revise existing regulations (referred to as the Stream Buffer Zone or SBZ rule) that have been in force since 1983 regarding the interaction between surface coal mining operations and streams. The existing SBZ rule generally provides that "no land within 100 feet of a perennial or intermittent stream (streams that have flowing water during certain times of the year, when groundwater provides stream flow) shall be disturbed by surface mining activities, including the dumping of mining waste, unless the regulatory authority grants a variance that specifically authorizes surface mining activities closer to or through such a stream."¹

The proposed 262-page Stream Protection Rule revises the SBZ rule and would impose new stream protection regulatory requirements that, according to the bill sponsor, "would essentially ban mining operations within 100 feet of anything the Department of the Interior . . . defines as a stream."² The rule "retains the basic elements of the 1983 stream buffer zone rules and many other portions of the current rules . . . [and] . . . includes elements from several of the other alternatives considered by OSMRE that would be more stringent than current rules, such as new requirements for baseline data collection to determine the impacts of proposed mining operations, more specificity on reclamation plans, and more specificity on measures to protect fish and wildlife from adverse impacts of mining."³

The rewrite of the rule "has been an ongoing process for over six years, costing taxpayers roughly \$10 million."⁴ An early draft "indicated the rule would result in a loss of at least 7,000 jobs in Appalachia alone and drastically reduce coal production in 22 states."⁵ The Committee on Natural Resources has conducted an investigation that "revealed gross mismanagement of the rulemaking process, including the use of unqualified contractors."⁶ The Committee's review also determined that the regulation "omits and ignores the relevant input from those stakeholders with the most expertise in regulating mining—the States."⁷ Consequently, earlier this year, "11 states withdrew as cooperating agencies from the rewrite's rulemaking process, citing an unwillingness by OSMRE to permit them to participate in the development of the rule, and a lack of communications since 2011."⁸ Moreover, the science on which the regulation is based has often not been made available to the public and interested stakeholders.

H.R. 1644 is designed to remedy these problems and ensure transparency in this rulemaking process. According to its sponsor, the bill "would prevent the administration from implementing a new stream buffer zone rule intentionally designed to shut down all surface mining and a significant section of underground mining in the Appalachian region . . . [and] . . . protects the ability of Americans to seek prosperity from our nation's natural bounty and is good policy for our families."⁹

In the 113th Congress, the House passed [H.R. 2824](#), *the Preventing Government Waste and Protecting Coal Mining Jobs in America*, by a vote of [229 to 192](#) on March 25, 2014. The bill included

¹ See CRS Report—"[The Office of Surface Mining's Proposed Stream Protection Rule: An Overview](#)," September 10, 2015 at 4.

² See Fact Sheet—"[Supporting Transparent Regulatory and Environmental Actions in Mining \(STREAM\) Act](#)"

³ See [CRS Report](#) at 7.

⁴ See [House Report 114-277](#) at 3.

⁵ Id.

⁶ Id.

⁷ See [Letter](#) to the Honorable Joseph G. Pizarchik, Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, July 29, 2015 at 1.

⁸ See [House Report 114-277](#) at 4.

⁹ See Press Release—"[Congressman Mooney Introduces Bill to Preempt a New Front in the War on Coal](#)," March 30, 2015.

a provision to prohibit the initiation of new rulemaking on a stream buffer zone rule until a comprehensive report on the rule's impact was provided to Congress.

In the 112th Congress, the House passed [H.R. 3409](#), *the Stop the War on Coal Act of 2012*, by a vote of [233 to 175](#) on September 21, 2012. The bill included provisions to limit the authority of the Secretary of the Interior to issue proposed or final regulations if the regulation: would adversely impact employment in coal mines; reduce revenue to federal, state, Tribal or local governments; reduce the amount of coal available for domestic use or export; designate areas unsuitable for coal mining; or expose the American taxpayer to takings liability for privately owned coal that can't be mined due to onerous regulation.

COST

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 1644 would cost \$2 million over the 2016 to 2017 period, assuming appropriation of the authorized amounts. In addition, CBO estimates that enacting the bill would increase net offsetting receipts, which are treated as reductions in direct spending, by roughly \$1 million over the 2020 to 2023 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 1644 would not affect revenues.

AMENDMENTS

1. Rep. Doug Lamborn (R-CO)—The manager's [amendment](#) makes a technical fix to a U.S. Code citation and addresses a concern regarding copyrighted scientific products.
2. Rep. Dan Kildee (D-MI)—The [amendment](#) prevents the rules in the underlying bill from being delayed if it protects drinking water quality.
3. Rep. Matt Cartwright (D-PA)—The [amendment](#) directs funding from AML certified states for use in revitalizing economically distressed communities which have been adversely affected by discharge from abandoned mine lands.
4. Rep. Terri Sewell (D-AL)—The [amendment](#) addresses the exemption clause in Sec. 530. Lowers the threshold of postponing the delay of a rule if there is a threat that a delay would cause or significantly contribute to the development of negative chronic or long-term health conditions.

STAFF CONTACT

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.