

Stream Protection Rule

Myths v. Facts

1. Myth: The SPR will result in the loss of between 40,000 and 77,500 jobs in the coal industry.

Fact: The final SPR will not have an adverse impact on jobs. The regulatory impact analysis (RIA) for the rule estimates overall that employment will increase an average of 156 full time jobs. Where coal production is unprofitable under market conditions, jobs are predicted to decline by an average annual aggregate of 124 fulltime jobs. This will be more than offset by an average annual gain of 280 fulltime jobs needed to comply with the rule where mining remains profitable, such as additional jobs like heavy machine operators for materials placement and water sampling professionals. For purposes of comparison, the Energy Information Administration reports that total coal industry employment in 2015 was equal to 65,971, decreasing 12% from 2014.

2. Myth: The SPR will prohibit longwall mining and place up to 64% of total U.S. coal reserves off-limits to mining.

Fact: The final SPR will not have a significant adverse impact on longwall mining, mineable reserves or coal production. The final rule does not prohibit the use of longwall mining or other underground mining methods that use planned subsidence, provided that those operations would not cause material damage to the hydrologic balance outside the permit area. Rather, the engineering analysis in the RIA finds that most remaining coal reserves suitable for longwall mining are so deep that subsidence from longwall mining is unlikely to have a substantial adverse impact on streams. Temporary impacts are allowed so long as they do not rise to the level of material damage to the hydrologic balance outside the permit area. Diminished flow within a short section of a stream segment over a longwall panel that recovers within a brief period of time or is repairable may have no discernible impact on attainment of water quality standards or premining uses and would not constitute material damage to the hydrologic balance outside the permit area.

3. Myth: The SPR duplicates and conflicts with state agency authority under the Clean Water Act.

Fact: The final SPR was revised in response to comments, particularly those provisions relating to the Clean Water Act (CWA), to promote coordination and consultation between

SMCRA and CWA program agencies while clarifying and preserving each agency's decision-making authority under pertinent law. Both the Environmental Protection Agency (EPA) and the US Army Corps of Engineers (ACOE) concurred with the final rule. The concurrence letter from EPA states that "we have concluded that nothing in the Stream Protection Rule is inconsistent with the provisions of the CWA [Clean Water Act] and that the final rule does not inhibit the EPA's CWA authority to require that surface mining activities comply with all applicable provisions of the CWA, particularly those provisions related to water quality." The EPA concurrence letter further states that "the final Stream Protection Rule incorporates measures to limit duplication and avoid inconsistency in the implementation of SMCRA and CWA programs, while supporting complementary, comprehensive, and effective environmental reviews of proposed surface coal mining operations."

4. Myth: OSMRE did not coordinate with state regulatory authorities or comply with Congressional direction to do so.

Fact: As discussed in a letter dated December 15, 2016, from Secretary Sally Jewell to Paul Ryan, Speaker of the House of Representatives, OSMRE has provided extensive opportunity for state involvement. OSMRE shared an early administrative draft of the environmental impact statement (EIS) with state regulatory authorities and utilized the comments received to revise the draft EIS. Additionally, over 100 days were provided for comment on the proposed SPR, draft EIS, and draft RIA. OSMRE also held public hearings in six cities across the country to allow stakeholders an opportunity to provide feedback on the proposed rule and associated documents. During the public comment period, we received more than 94,000 comments on the proposed rule and associated documents.

OSMRE also engaged extensively with state regulatory authorities both prior to and consistent with the direction in the report accompanying the Consolidated Appropriations Act of 2016. These efforts included the OSMRE Director's letters to at least 15 states offering to discuss the proposed rule. In addition, the Assistant Secretary of the Interior for Land and Minerals Management, and OSMRE senior leadership traveled across the country to meet with numerous representatives of state regulatory authorities concerning the rule, as well as members of the Interstate Mining Compact Commission, and received valuable feedback that was incorporated into the final rule. OSMRE also hosted technical assistance meetings and teleconferences across the country to provide states with more opportunities to ask questions in person and by telephone. Since September 2015, Interior Department and OSMRE officials and staff held 24 meetings, including in-person meetings and teleconferences, with state representatives regarding the SPR.

These meetings were not the only opportunities during which states, industry, and other interested parties have had an opportunity to discuss the proposed rule. Specifically, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) held 38 meetings and teleconferences with representatives of state regulatory agencies, industry, and stakeholder groups, as well as representatives of the Congressional Coal Caucus, to discuss the proposed rule. A Departmental representative participated in a large majority of these meetings and teleconferences.

The Assistant Secretary and Director attended the July 12, 2016, OIRA-hosted meeting with the Congressional Coal Caucus at which five Congressional Coal Caucus members participated, in addition to staff from an additional eight members' offices and staff from the House Natural Resources Committee. Other OIRA-hosted meetings included representatives from state regulatory authorities in Alaska, Illinois, Indiana, Kentucky, North Dakota, Ohio, Virginia, and Wyoming, as well as a number of state coal associations.

Consistent with the guidance provided by Congress in the report accompanying the Consolidated Appropriations Act of 2016, OSMRE used modern, transparent, and cost-effective means to provide states access to SPR documents through regulations.gov. OSMRE also provided the states with a list of over 670 reference documents that were used during the development of the proposed rule. State agencies, including the Wyoming Department of Environmental Quality, have been provided additional opportunities for input.

5. Myth: The SPR does not accord sufficient deference to principles of state primacy.

Fact: The SPR continues to recognize state primacy in the regulation of surface coal mining and reclamation operations, as provided in section 101(f) of SMCRA. Primacy states can and should tailor their SMCRA regulatory programs to local conditions, provided that those programs meet the minimum requirements of SMCRA and are no less effective than the federal regulations, as revised by the SPR.

OSMRE has authority under sections 201(c)(2) and 501(b) of SMCRA to issue regulations like the SPR to establish minimum federal standards for the regulation of surface coal mining and reclamation operations. In particular, section 201(c)(2) of SMCRA provides that the Secretary, acting through OSMRE, shall "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act[.]" The SPR updates the federal minimum standards, which were originally adopted decades ago, to reflect 30 years of scientific research on mining and reclamation techniques and its environmental impacts and 30 years of experience in implementing SMCRA.

6. Myth: The SPR provides the U.S. Fish and Wildlife Service (FWS) with a veto over issuance of state permits under SMCRA.

Fact: Under section 7 of the Endangered Species Act (ESA), OSMRE must consult with the U.S. Fish and Wildlife Service (Service) on any action that “may affect” listed terrestrial and freshwater species, including implementation of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) surface coal mining and reclamation regulatory program. The final SPR was revised in response to comments and recognizes that permit applicants and regulatory authorities may achieve ESA compliance by various means. Nothing in the rule accords the FWS the power to “veto” approval of permit applications. Rather, the SPR and new 2016 Biological Opinion create regulatory certainty for Industry by providing States, coal companies, and miners with a clear and expeditious process for obtaining ESA authorization for incidental take of threatened and endangered species during surface coal mining and reclamation operations.

7. Myth: The compliance cost for industry to implement the SPR would be prohibitive.

Fact: In fact the costs of implementing SPR are not significant. The regulatory impact analysis for the SPR estimates that total industry SPR compliance costs will average \$81 million per year (\$71 million for surface mines and \$10 million for underground mines), which is approximately 0.3% of total estimated coal company revenues in 2015. Compliance costs for surface mines with 1,250 or fewer employees will range between 0.1 and 3.1% of total company revenues, depending upon the region in which the mine is located, while compliance costs for underground mines with 1,500 or fewer employees will range between 0.0 and 0.1% of total company revenues, depending upon the region in which the mine is located.

8. Myth: The SPR will result in severe (15-35%) reductions in tax revenues in coal states.

Fact: The regulatory impact analysis for the SPR predicts that the rule will result in an average annual reduction in coal production of 0.7 million tons, which is 0.08% of baseline production. That reduction will consist of 0.2 million tons of surface-mined coal (0.04% of baseline surface mine production) and 0.5 million tons of underground-mined coal (0.14% of baseline underground mine production). According to the regulatory impact analysis, such a reduction in coal production will result in an estimated aggregate reduction in state coal severance tax revenues of \$995,000 per year. For context, state governments collected over \$0.9 billion in coal severance tax revenues across the United States in 2015. Therefore these anticipated impacts represent less than 1% of annual severance tax collections.

With respect to other taxes (such as ad valorem taxes, workers compensation taxes, corporate income taxes, sales and use taxes, reclamation fees, and black lung fees) that are related to the level of coal production, the regulatory impact analysis states that similar impacts could also be expected in some regions.

9. Myth: The SPR will severely limit the availability of coal to electric generating units that could negatively impact electricity customers.

Fact: The impact of the final SPR on a household's monthly electric bill is negligible. Average wholesale electricity prices are expected to increase by approximately 0.02%, which means a household using 900 kWh paying \$113/ month would pay about 2 cents more per month.