

[Repeal of the Stream Protection Rule \(Public Law 115-5, 115th Congress\)](#)

Repeals the Stream Protection Rule, which imposed greater regulation on mining activities in the United States.

Updated last **November 10, 2017**
for the 02/16/17 version of Public Law 115-5.



WHAT IT DOES

On February 16, 2017, Congress passed [H.J.Res.38](#), which nullified the [Stream Protection Rule \(81 FR 93066](#), December 20, 2016) finalized by the Office of Surface Mining Reclamation and Enforcement in the Department of Interior at the very end of the Obama Administration.

The Stream Protection Rule modified several existing regulations pertaining to surface coal mining. Modifications were intended to change how mining permits defined damage to streams and other water resources, require additional study before issuance of a permit, increase monitoring requirements and ensure restoration or reclamation activities returned land to a state capable of supporting its prior uses.

This nullification by the 115th Congress was introduced in response to concerns from the mining industry that the new requirements would negatively affect revenues.

BACKGROUND

Law & Jurisdiction

Coal mining in the United States falls under the purview of the Department of the Interior ([DOI](#)). Within DOI, the Bureau of Land Management ([BLM](#)) oversees the [lease of public lands for mining](#). In 1977, the Surface Mining Control and Regulation Act ([SMRCA](#)) created the Office of Surface Mining Reclamation and Enforcement ([OSMRE](#)) under DOI to regulate both active and abandoned mines. Prior to [OSMRE](#), there was no entity regulating mines on the federal level.

Economics

In 2016, about [30%](#) of the United States energy came from coal, although the amount of energy generated by coal in the US has [decreased about 39% since 2007](#). The decrease has been attributed to a decrease in demand, as power plants shift [away from coal usage and towards natural gas](#). Regions of the United States that were formerly reliant on domestic coal production have seen an [increasingly steep decline in production](#) since 2007, leading to [widespread unemployment](#), declining school systems, and [poor health outcomes](#). The coal industry is [expected to rebound slightly](#) in 2017 as the price of natural gas is forecasted to rise, but the construction of more natural gas power plants that will come onto the grid in 2018 may send coal production into a second decline. The Appalachian coal producing region has seen production [decline by over 50% since 2008](#), while Western and Interior coal producing regions have been less affected. [Natural gas production](#) has increased significantly over the past decade (in large part due to [technological advances related to hydraulic fracturing](#)) after remaining steady for 30 years, but 2016 saw a slight dip in production from the 2015 peak.

In 2016, there were [~160,000](#) people working in the coal industry between fuel production and electricity generation; ~57,000 of these jobs were coal mining and mining support, down from ~93,000 mining and support jobs in 2009. In June, EPA director Scott

Pruitt claimed that the coal industry had added 50,000 jobs in the past six months; however, [Bureau of Labor Statistics data](#) put that number at only 1,300. The vast difference in these numbers comes from inconsistent definitions of coal sector jobs, with larger numbers including general miners, loggers, electricians, surveyors, truck drivers, mechanics, and other supporting jobs which may be impacted in downstream industries. The wide variation between state and federal employment data makes it difficult to determine the precise impact of coal production on the economy.

In 2017, the Congressional Research Service determined the 2016 Stream Protection Rule would [cost the coal industry \\$52 million annually](#), with 86% of this cost impacting surface mining operations; of the affected surface mines, 46% are in the Appalachian region. The impact of the rule was further estimated to raise the price of surface mined coal in Appalachia by 40 cents per ton and cost the industry ~260 jobs annually. The loss in mining jobs would be offset by the addition of ~250 mining regulatory and compliance jobs annually.

History

The Stream Protection Rule repealed by Public Law 115-5 was issued on December 19th, 2016 and updated Title V of SMRCA [30 U.S.C. 1251](#), which deals with 'Control of the Environmental Impacts of Surface Coal Mining.' The Stream Protection Rule's purpose was to minimize the impacts of surface coal mining on the environment, based on scientific and technological advances that have taken place in the 40 years since SMRCA's inception. The rule focused specifically on regulations related to impacts on streams and the environment after mining, and added additional monitoring and analysis regulations:

- To receive a permit, the mining company is required to establish specific criteria to indicate when the water quality of a stream has been compromised, and must include "business as usual" measurements for stream water quality (i.e., water quality before mining).
- The rule included specific recommendations about how to monitor areas adjacent to the mine once activities began.
- The rule promoted the need to protect or restore perennial and intermittent streams (i.e., streams that are not present year-round) that are important to the health of downstream water sources.
- The rule ensured advanced technology and management procedures are implemented.
- The rule ensured land is restored to the previous condition once mining ceases.
- The rule provided updated protection for endangered species and critical habitat protected by the Endangered Species Act.

The 115th Congress reviewed the Stream Protection Rule under the Congressional Review Act ([CRA](#)) of 1996, which allows for an expedited review by Congress of rules issued by federal agencies within 60 days of their issuance. A CRA review allows congress to issue a joint resolution of disapproval of the regulatory rule in questions.

RELEVANT SCIENCE

Geology

As of 2015, [1,460 coal mines were operating in the United States](#), including 1,055 surface mines. Coal is a major fuel source in the US, [formed from plant matter that has undergone a process called coalification](#), turning it into the black rock-like substance we use as an energy source. Coal is found in underground in geological deposits called 'seams' that run underground and therefore must be excavated by mining.

There are two major methods of mining coal: underground mining and surface mining.

- Underground mining tunnels underground to access and excavate the coal
- Surface, or "strip" mining removes the earth that lies over the coal seam, permitting access from the surface. In certain parts of the country (most notably in Appalachia), a type of surface mining called mountain top removal (MTR) uses explosives to remove the top of a mountain to access the coal beneath.

Coal Mining Process ("Coal: Research and Development to Support National Energy Policy," [National Academies Press](#), 2007)

Surface Hydrology

A [2011 study by the EPA](#) found that mountaintop removal (MTR) mining "[led] directly to five principal alterations of stream ecosystems":

1. Springs, and...small perennial streams are permanently lost
2. Concentrations of major chemical ions (sulfate, bicarbonate, calcium, and magnesium) are persistently elevated downstream
3. Degraded water quality reaches levels that are acutely lethal to standard laboratory test organisms
4. Selenium concentrations are elevated, reaching concentrations that have caused toxic effects in fish and birds and
5. Macroinvertebrate and fish communities are consistently degraded

Research published in the Journal of Environmental Science & Technology (2014) found that [standard practices to restore impacted streams had little or no affect](#), and did not meet the required quality improvements under the Clean Water Act.

Streams are crucial to local and regional ecology because they filter pollutants and carry sediment and nutrients into larger bodies of water. Streams also provide an important habitat for insects, amphibians, and fish that have important roles in ecology and the food web. Some streams are permanent and flow year-round, while many others (classified as *intermittent* or *ephemeral*) flow only during certain seasons or after rainfall.

(Read More: SciPol Science Modules on [Hydrology](#) & Stream Ecology)

ENDORSEMENTS & OPPOSITION

[Proponents of PL115-5](#) believe that the Stream Protection Rule is a [confusing and over-reaching regulation](#) that would hurt the coal economy. It would be a burden on mining companies by costing them money to comply with regulations and preventing companies from accessing coal. The rule would negatively impact mining communities through [loss of jobs and tax revenue](#). They also maintain that existing rules regarding post-mining reclamation efforts are adequate.

[Opponents of PL115-5](#) suggest that the mining industry needs updated regulations, such as those contained in the now-repealed Stream Protection Rule, to ensure that surface and MTR mining do not do irreparable harm to the environment and local communities in the mined area. Economically, opponents say that loss of mining jobs has more to do with lower prices of competing energy sources like natural gas and that any loss in mining jobs from the Stream Protection Rule would be offset by jobs created in mining regulation

RELATED POLICIES

- [S.J. Res. 10](#), introduced in the Senate by Mitch McConnell (R-KY) was a related joint measure introduced in the Senate on January 30th, 2017.
- [H. J. Res. 11](#) and [H. J. Res. 16](#) introduced by Evan Jenkins (R-WV-3) and Doug Lamborn (R-CO-5) respectively were identical to H. J. Res. 38. They were introduced on January 3rd and 4th, 2017.
- [H. Res 70](#) introduced by Dan Newhouse (R-WA-4) set forth the rule for consideration of H.J. Res 38. Introduced in the House Rules committee on January 30th, 2017. H. Res 70 was debated on and passed on January 31st, 2017 by a 236-186 roll call vote.

POLICY HISTORY

Public Law 115-5 was introduced in the House as House Joint Resolution 38 ([H.J. Res. 38](#)) on January 30, 2017 in the House and

referred to the House Committee on Natural Resources.

- On February 1, H.J. Res 38 was passed the House by a 228-194 roll call vote.
- The Senate received the measure on February 1 and passed the measure without amendment on a 54-45 vote on February 2, 2017.
- The joint resolution was presented to the President by the House on February 6 and signed into law on February 16, 2017.

PRIMARY AUTHOR

Dan Keeley; Lauren Mechak; Morgan Browning; Imari Walker Karega; Erin Viere

EDITOR(S)

Dan Copple; Alexandra Sutton Lawrence, M.Sc.

ENERGY SUBCATEGORY

[Source](#)
[Production, Conversion, Distribution](#)

RECOMMENDED CITATION

Duke SciPol, "Repeal of the Stream Protection Rule (H.J.Res.38, 115th Congress)" available at <http://scipol.duke.edu/content/repeal-stream-protection-rule-public-law-115-5-115th-congress> (11/09/2017).

LICENSE



This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/). Please distribute widely but give credit to Duke SciPol, linking back to this page if possible.