



# Interstate Mining Compact Commission

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January 30, 2017

The Honorable Paul Ryan  
Speaker  
United States House of Representatives  
H-232, U.S. Capitol  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

Dear Speaker Ryan and Majority Leader McConnell:

On behalf of the member states of the Interstate Mining Compact Commission (IMCC), I am writing to urge Congress to exercise its power under the Congressional Review Act (CRA), 5 U.S.C. 801 et seq., to disapprove the "Stream Protection Rule" (SPR) issued by the Office of Surface Mining Reclamation and Enforcement (OSM) at 81 Fed. Reg. 93,066 (Dec. 20, 2016), thereby invalidating the rule.\*

The IMCC is a multi-state governmental organization representing the natural resource and environmental protection interests of its 26 member states, the majority of which implement approved primacy regulatory programs pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The coal mining states that operate approved programs serve as the primary and exclusive regulatory authorities under authorized SMCRA primacy agreements. The states' 30-plus years of experience and expertise in the implementation of their programs uniquely qualifies them with a depth of understanding of those programs; their regional, ecological, and environmental conditions; and the measures necessary to effectively regulate coal mines within their borders.

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\* The Commonwealths of Pennsylvania and Virginia have notified IMCC that they are withholding concurrence regarding the request for a joint resolution disapproving the Stream Protection Rule under the Congressional Review Act. New York State and North Carolina have no coal resources and therefore advise that their states have no position on this issue. Tennessee does not currently have primacy to regulate coal mining in the state, and therefore has no position on this issue at this time.

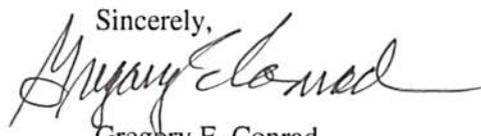
IMCC appreciates the attention that Congress has given to this critical matter throughout the rulemaking process, including directing OSM to share relevant environmental data and drafts with the states and work to reengage the states “in a meaningful manner” before finalizing the Rule. 161 Cong. Rec. H10217 (daily ed. Dec. 17, 2015). Despite that direction, OSM failed to comply or to respond to additional requests to allow for greater involvement by the states in the regulatory process, offering only perfunctory opportunities that were inadequately timed and structured in such a way as to prevent truly meaningful engagement. For 90 days, OSM also ignored multiple requests made by states and Members of Congress to review supporting environmental and regulatory impact statements and analyses related to the SPR.

Without fulfilling Congress’ mandate to reengage the states, and without significant and authentic consultation with the states, on December 19, 2016, OSM issued a news release announcing the Final SPR. The Rule was published in the Federal Register the next day, with an effective date of January 19, 2017 -- one day prior to the Inauguration of the new Presidential Administration.

The result of OSM’s failure to properly consult with the states is a burdensome and unlawful Rule that usurps states’ authority as primary regulators of coal mining as intended by Congress under SMCRA, and demands appropriate congressional action. The regulation also seeks to impose an unwarranted, top-down, one-size-fits-all approach that does not take into account important regional and ecological differences, such as climate and local geology, as required under SMCRA. It would subject longwall mining to unrealistic standards, and broadly prohibit many mining activities and standard operating procedures already regulated effectively by states. Despite the claims of OSM in its Regulatory Impact Analysis, the Rule would place significant resource and financial burdens on state regulatory programs.

Several member states have already taken legal action against the SPR. By exercising its authority under the CRA, Congress can act immediately to protect both the states and federal government from having to engage in potentially lengthy litigation at great expense to taxpayers to avoid the damaging effects imposed by the SPR. IMCC and its member states respectfully request that you and your colleagues in the Congress pass a joint resolution disapproving the Final Stream Protection Rule under the procedures of the Congressional Review Act, 5 U.S.C. 801 et seq., so that it shall have no continuing force or effect. We are hopeful that President Trump will support this effort, and to that end, we respectfully submit a copy of this letter to Vice President Pence.

Thank you for your consideration and urgent attention to this matter.

Sincerely,  
  
Gregory E. Conrad  
Executive Director

cc: The Vice President of the United States  
The Honorable Rob Bishop  
The Honorable Lisa Murkowski