

Subcommittee on Energy and Mineral Resources
Doug Lamborn, Chairman
Hearing Memo

May 12, 2015

To: Natural Resource Committee Members

From: Majority Committee Staff
Subcommittee on Energy and Mineral Resources

Hearing: Legislative hearing on: **H.R. 1644 (Mooney)**, to amend the Surface Mining Control and Reclamation Act of 1977 to ensure transparency in the development of environmental regulations, the “*STREAM Act*”

The Natural Resources Subcommittee hearing will take place on **Thursday, May 14, 2015 at 10:00 a.m. in room 1334 Longworth House Office Building**. This hearing will focus on the need for scientific transparency in the development of environmental regulations affecting mining, the benefits of open research, and the merit of a transparent third party evaluation of the existing stream buffer rule.

Policy Overview

- The U.S. Department of the Interior’s Office of Surface Mining (OSM) has continually promulgated rules that rely upon opaque “internal studies,” which are not made publicly available. The STREAM Act strengthens the rigor of scientific studies, reports, and findings by requiring scientific products used to inform regulatory actions be made publicly available, and therefore subject to independent analysis.
- H.R. 1644 directs the Secretary of the Interior to contract with the National Academy of Sciences Board on Earth Sciences and Resources to conduct a comprehensive study of the effectiveness of the Stream Buffer Zone Rule that has been in place since 1983. The study will evaluate how effective the rule has been in ensuring the protection of streams. While this study is being conducted, a prohibition on the promulgation of new rules addressing stream protection or stream buffers will be implemented to ensure the Secretary incorporates the findings of the study.
- This bill clarifies the statutory bounds of OSM’s authority by curtailing its ability to propose and enforce any regulation under the Surface Mining Control and Reclamation Act of 1977 that would duplicate existing authorities under other federal laws outside of OSM’s jurisdiction. The draft language prohibits OSM from determining compliance with those laws and regulations outside of its authority.

Witnesses Invited

Mr. Russell Hunter, Counsel
Division of Mining and Reclamation
West Virginia Department of Environmental Protection
Charleston, West Virginia

Mr. Hal Quinn, President and CEO
National Mining Association
Washington, DC

Dr. Braden Lusk, P.E., Professor of Mining Engineering
University of Kentucky
Lexington, KY

Mr. Michael Hendryx, Ph.D., Professor, Applied Health Science
School of Public Health, University of Indiana
Bloomington, IN

Summary of Bill

On Thursday, March 26, 2015, Congressmen Alex Mooney (WV-02), Bill Johnson (OH-06), and Doug Lamborn (CO-05) introduced H.R. 1644, the “Supporting Transparent Regulatory and Environmental Actions in Mining Act” (STREAM Act). This legislation increases scientific transparency for rulemakings affecting mining, directs a transparent third party to evaluate the existing stream buffer zone rule, and reduces duplicative regulation. The bill was referred to the House Committee on Natural Resources and assigned to the Subcommittee on Energy and Mineral Resources.

Hearing Focus and Background

The Surface Mining Control and Reclamation Act of 1977 (“SMCRA”) is the primary federal law regulating the environmental effects of coal mining in the United States. SMCRA created two programs: Title IV for reclaiming abandoned mine lands; and Title V for regulating active coalmines. SMCRA also created the Office of Surface Mining Reclamation and Enforcement (“OSM”), an agency within the Department of the Interior, to promulgate regulations, to fund state regulatory and reclamation programs, and to ensure consistency among state regulatory programs.

Under the authority granted by SMCRA, OSM promulgated the “Stream Buffer Zones and Fish, Wildlife, and Related Environmental Values” rule in 1983.¹ The 1983 rule remained unchanged until December 12, 2008, when OSM published its final rule on “Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams” commonly referred to as the ‘Stream Buffer Zone Rule’ in the Federal Register. The publication came after a five-year deliberative process that included extensive scientific research, environmental analyses, public

¹ See Stream Buffer Zones and Fish, Wildlife, and Related Environmental Values, 48 Fed. Reg. 30312 (June 30, 1983) (codified at 30 C.F.R. pt. 816 and 817).

comment, and a concurrence from the Environmental Protection Agency² and was to go into effect on January 12, 2009.³

However, before the new regulation could go into effect, the National Parks Conservation Association (“NPCA”) and Coal River Mountain Watch filed suit against the Department and OSM for failing to consult with the U.S. Fish and Wildlife Service (FWS) pursuant to the Endangered Species Act.⁴ To resolve the litigation, OSM reached a settlement with the environmental groups, and agreed to an expedited rulemaking process with a deadline of February 28, 2011.

A month before the deadline, on January 26, 2011, portions of the environmental impact statement being prepared for the new “Stream Protection Rule” were leaked to the public. The Associated Press reported that OSM’s preferred “Stream Protection Rule” could cost at least 7,000 jobs and reduce coal production in 22 states.⁵ Through oversight conducting by the Committee on Natural Resources, it was revealed that the expedited time frame coupled with an inexperienced contractor, and gross mismanagement of the rulemaking process led to major issues with the rulemaking.⁶ The leak, coupled with the effectiveness of the congressional oversight led OSM to restart the rulemaking process with new contractors, thereby missing the settlement-imposed deadline. The rewrite has already cost the Department of the Interior over \$9 million, though neither a draft rule nor draft environmental impact statement has ever been released.⁷

After OSM missed the initial and subsequent negotiated deadlines for completion of the rule, the environmental groups reinitiated their lawsuit, which led to the court’s rejection of the 2008 Rule; the Department of the Interior has since reinstated the 1983 Rule while it continues to work on its Stream Buffer Zone rule rewrite.⁸

To address the ongoing rulemaking process, the Committee in the prior two Congresses (112th and 113th) has introduced and passed through the House two different bills that sought to stop the Stream Buffer Zone rule rewrite. In the 113th Congress, the legislation required OSM to

² December 2, 2008 letter from Stephen Johnson, U.S. Environmental Protection Agency, to Dirk Kempthorne, Secretary, U.S. Department of the Interior, *available at* http://s3.amazonaws.com/publicaws/assets/docs/johnson_kempthorne_letter_081204.pdf.

³ Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams, 73 Fed. Reg. 75814 (codified at 30 C.F.R. § 817.57 (2014)) <http://www.gpo.gov/fdsys/pkg/FR-2008-12-12/html/E8-29150.htm>.

⁴ Referenced lawsuits were filed in December 2008 and January 2009, effectively stopping the implementation of the Stream Buffer Zone Rule. Coal River Mountain Watch, et. al v. Salazar No. 08-2212 (D.D.C) filed; National Parks Conservations Ass’n v. Salazar No 09-115 (D.D.C)

⁵ *New rules would cut thousands of coal jobs*, W. Va. Gazette, January 26, 2011, *available at* <http://www.wvgazette.com/News/MiningtheMountains/201101280708>.

⁶ For more background information into the congressional investigation see: MAJORITY STAFF OF H. COMM. ON NATURAL RESOURCES, 112TH CONG., PRESIDENT OBAMA’S COVERT AND UNORTHODOX EFFORTS TO IMPOSE NEW REGULATION ON COAL MINING AND DESTROY AMERICAN JOBS.

⁷ See March 13, 2014 Letter from Chairman Doc Hastings, H. Comm. On Natural Resources, to Mary Kendall, Deputy Inspector General, U.S. Dep’t of the Interior, *available at* http://naturalresources.house.gov/uploadedfiles/03_13_14_hastings_ltr_to_dep_ig_kendall.pdf.

⁸ See Nat’l Parks Conservation Assoc. v. Jewell, 2014 U.S. Dist. LEXIS 152383, *35 (D.D.C. 2014).

institute the 2008 Rule and allow a period of time for it to be in place before evaluating the rule to determine if any additional changes were required.⁹ However, since the 2008 rule has subsequently been vacated, the legislation subject to this hearing required a different approach to deal with OSM's ongoing rulemaking.

Throughout the Committee's oversight and investigation of OSM's rule making process, Director Pizarchik and others have repeatedly made statements claiming the 1983 SBZ Rule provided stronger environmental protections than the 2008 SBZ Rule. In addition, the Director has repeatedly said that the ongoing rulemaking process is needed because of '*new science and technological advances*'. However, unlike the work leading to the development of the 2008 SBZ Rule, the materials leaked to the press in 2011 did not include any '*new scientific or technological research*.'

Several coal mining states that have primacy to regulate coal mining and reclamation of abandoned coal mines under SMCRA are cooperating agencies with signed MOUs for the current rulemaking exercise. Since the draft rule and other materials were leaked to the press in early 2011, OSM has refused to share substantive information or documents being generated as part of the ongoing rulemaking with the cooperating agency states.

In February, the cooperating agency states sent a letter to Director Pizarchik stating their concerns regarding the agency's refusal to follow NEPA rules and guidance for cooperating agencies stating; "OSM has not communicated with them since 2011, and limited consultation prior to that." They also threatened to either clarify the nature of their involvement with the rulemaking or withdraw as cooperating agencies. Several states have since formally withdrawn as a cooperating agency.

The treatment of the cooperating agency states and the lack of transparency in the rulemaking process is particularly egregious in light of the Director's own testimony provided to the subcommittee on OSM's FY-2016 OSM budget request, in which he stated [the] "States permit and regulate 97 percent of the Nation's coal production. States and Tribes also abate well over 90 percent of the AML problems."¹⁰

Considering that the states regulate 97 percent of the coal mines they have considerably more experience with the SBZ rule and its effectiveness in mitigating for adverse environmental impacts to various water courses than OSM.

The STREAM Act includes a section to provide for more transparency in any rulemaking pursued under SMCRA by requiring the publication of any scientific products used to support a rule to be published 90 days in advance of the rule. This section was modified from an amendment offered by Rep. Bucshon during debate of H.R. 3409, the "Coal Miner Employment

⁹ See Stop the War on Coal Act of 2012, H.R. 3409, 112th Cong. § 101 (2012), and Preventing Government Waste and Protecting Coal Mining Jobs in America, H.R. 2824, 113th Cong. § 2 (2014).

¹⁰ *Effect of the President's FY-2016 Budget and Legislative Proposals for the Office of Surface Mining on Private Sector Job Creation, Domestic Energy Production, State Programs and Deficit Reduction Hearing Before the S. Comm. On Energy and Mineral Resources*, 114th Cong. (2015) (statement of Joseph Pizarchik, Director of The Office of Surface Mining Reclamation and Enforcement) available at http://naturalresources.house.gov/uploadedfiles/pizarchiktestimony3_18.pdf.

and Domestic Energy Infrastructure Protection Act” in the 112th Congress. The amendment passed by voice vote.

Other provisions include a requirement for a third party to transparently evaluate the existing stream buffer zone rule, and a requirement to reduce duplicative regulation.

Section by Section Summary

Section 1: Short Title

This Act may be cited as the “Supporting Transparent Regulatory and Environmental Actions in Mining Act” or the “STREAM Act.”

Section 2: Publication of Scientific Products

This section ensures transparency in the rulemaking process by requiring OSM to make available online its “scientific products” that are relied upon in its rulemakings. In the past, OSM has sought to promulgate rules based on internal studies that are not made public. These studies, and the raw data upon which they are premised, become the foundation for regulatory actions, such as the previous draft SBZ Rule. To address this issue, the Act would require OSM to publish all scientific products it relies on in the rulemaking process – including the scientific studies used to produce environmental impact statements or environmental assessments (collectively “environmental analyses”), and economic assessments; and, for federally-funded scientific products, the STREAM Act requires OSM to also publish raw data, and the curriculum vitae of the researchers receiving the funds. Failure to publish these studies 90 days prior to the release of a draft rule, environmental analysis or economic assessment shall extend the notice and comment period by one day for each day such product is withheld. For final rules, environmental analyses, or economic assessments, such failure will delay the effective date of the rule by 60 days plus each day the scientific product is withheld. If a scientific product is withheld for longer than six months, then the rule, environmental analysis, or economic assessment will be withdrawn.

Section 3: Study of the SBZ Rule

Section 3 of the STREAM Act requires the Secretary of the Interior, in consultation with the Interstate Mining Compact Commission, to contract with the National Academy of Sciences to conduct a study of the 1983 SBZ Rule. This study will examine the effectiveness of the 1983 rule in protecting perennial and intermittent streams, and make recommendations for improving said effectiveness. While the study is ongoing, the Secretary is prohibited from issuing any regulations addressing stream buffer zones or stream protection. Once the study has been published, the Secretary is required to take into consideration the findings and recommendations of the report when publishing any further rule addressing stream buffer zones or stream protection. While this study is being conducted, the 1983 Rule will govern stream protection.

Section 4: Compliance with Other Federal Laws

The final section of HR 1644 seeks to inhibit OSM's regulatory overreach by curtailing regulatory action that would "duplicate[], enforce[], or determine[] compliance" with Acts that are outside OSM's jurisdiction. An express concern related to the ongoing SBZ Rule rewrite is that OSM has sought to interpret and enforce the Clean Water Act outside its authority by establishing a new set of water quality monitoring and evaluation standards and procedures. The final section of the STREAM Act would curtail such actions, and ensure and future rulemaking by OSM would be confined to its express statutory authority.

Showing Current Law if H.R. 1644 were enacted (Ramseyer report):

Surface Mining Control and Reclamation Act of 1977

[new text in yellow; text deleted in brackets]

CHAPTER 25-SURFACE MINING CONTROL AND RECLAMATION

SUBCHAPTER I-STATEMENT OF FINDINGS AND POLICY

Sec. 1201. Congressional findings.

Sec. 1202. Statement of purpose.

SUBCHAPTER II-OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Sec. 1211. Office of Surface Mining Reclamation and Enforcement.

SUBCHAPTER III-STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES

Sec. 1221. Authorization of State allotments to institutes.

Sec. 1222. Research funds to institutes.

Sec. 1223. Funding criteria.

Sec. 1224. Duties of Secretary.

Sec. 1225. Effect on colleges and universities.

Sec. 1226. Research.

Sec. 1227. Center for cataloging.

Sec. 1228. Interagency cooperation.

Sec. 1229. Committee on Mining and Mineral Resources Research.

Sec. 1230. Eligibility criteria.

Sec. 1230a. Strategic Resources Generic Mineral Technology Center.

SUBCHAPTER IV-ABANDONED MINE RECLAMATIONS

Sec. 1231. Abandoned Mine Reclamation Fund.

Sec. 1232. Reclamation fee.

Sec. 1233. Objectives of fund.

Sec. 1234. Eligible lands and water.

Sec. 1235. State reclamation program.

Sec. 1236. Reclamation of rural lands.

Sec. 1237. Acquisition and reclamation of land adversely affected by past coal mining practices.

Sec. 1238. Liens.

Sec. 1239. Filling voids and sealing tunnels.

Sec. 1240. Emergency powers.

Sec. 1240a. Certification.

Sec. 1241. Omitted.

Sec. 1242. Powers of Secretary or State.

Sec. 1243. Interagency cooperation.

Sec. 1244. Remining incentives.

**SUBCHAPTER V-CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL
MINING**

Sec. 1251. Environmental protection standards.
Sec. 1251a. Abandoned coal refuse sites.
Sec. 1252. Initial regulatory procedures.
Sec. 1253. State programs.
Sec. 1254. Federal programs.
Sec. 1255. State laws.
Sec. 1256. Permits.
Sec. 1257. Application requirements.
Sec. 1258. Reclamation plan requirements.
Sec. 1259. Performance bonds.
Sec. 1260. Permit approval or denial.
Sec. 1261. Revision of permits.
Sec. 1262. Coal exploration permits.
Sec. 1263. Public notice and public hearings.
Sec. 1264. Decisions of regulatory authority and appeals.
Sec. 1265. Environmental protection performance standards.
Sec. 1266. Surface effects of underground coal mining operations.
Sec. 1267. Inspections and monitoring.
Sec. 1268. Penalties.
Sec. 1269. Release of performance bonds or deposits.
Sec. 1270. Citizens suits.
Sec. 1271. Enforcement.
Sec. 1272. Designating areas unsuitable for surface coal mining.
Sec. 1273. Federal lands.
Sec. 1274. Public agencies, public utilities, and public corporations.
Sec. 1275. Review by Secretary.
Sec. 1276. Judicial review.
Sec. 1277. Special bituminous coal mines.
Sec. 1278. Surface mining operations not subject to this chapter.
Sec. 1279. Anthracite coal mines.
Sec. 1279a. Publication of Scientific Products for Proposed Rules and Related Environmental Impacts Statements, Environmental Assessments, and Economic Assessments.

SUBCHAPTER VI-DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

Sec. 1281. Designation procedures.

SUBCHAPTER VII-ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 1291. Definitions.
Sec. 1292. Other Federal laws.
Sec. 1293. Employee protection.
Sec. 1294. Penalty.
Sec. 1295. Grants to States.
Sec. 1296. Annual report to President and Congress.
Sec. 1297. Separability.
Sec. 1298. Alaskan surface coal mine study.
Sec. 1299. Study of reclamation standards for surface mining of other minerals.

Sec. 1300. Indian lands.
Sec. 1301. Environmental practices.
Sec. 1302. Authorization of appropriations.
Sec. 1303. Coordination of regulatory and inspection activities.
Sec. 1304. Surface owner protection.
Sec. 1305. Federal lessee protection.
Sec. 1306. Effect on rights of owner of coal in Alaska to conduct surface mining operations.
Sec. 1307. Water rights and replacement.
Sec. 1308. Advance appropriations.
Sec. 1308a. Use of civil penalty funds to reclaim lands.
Sec. 1308b. Transfer of computer hardware, software and other technical equipment.
Sec. 1309. Certification and training of blasters.
Sec. 1309a. Subsidence.
Sec. 1309b. Research.
Sec. 1309c. Study of the “Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Stream Buffer Zones and Fish, Wildlife, and Related Environmental Values” final rule published June 30, 1983 (48 Fed. Reg. 30312 et seq.), and amended September 30, 1983 (48 Fed. Reg. 44777 et seq.).

SUBCHAPTER VIII-UNIVERSITY COAL RESEARCH LABORATORIES

Sec. 1311. Establishment of university coal research laboratories.
Sec. 1312. Financial assistance.
Sec. 1313. Limitation on payments.
Sec. 1314. Payments; Federal share of operating expenses.
Sec. 1315. Advisory Council on Coal Research.
Sec. 1316. Authorization of appropriations.

SUBCHAPTER IX-ENERGY RESOURCE GRADUATE FELLOWSHIPS

Sec. 1321. Fellowship awards.
Sec. 1322. Fellowship recipients.
Sec. 1323. Distribution of fellowships.
Sec. 1324. Stipends and allowances.
Sec. 1325. Limitation on fellowships.
Sec. 1326. Fellowship conditions.
Sec. 1327. Authorization of appropriations.
Sec. 1328. Research, development projects, etc., relating to alternative coal mining technologies.

* * * * *

TITLE V –CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

SEC. 530. PUBLICATION OF SCIENTIFIC PRODUCTS FOR PROPOSED RULES AND RELATED ENVIRONMENTAL IMPACT STATEMENTS, ENVIRONMENTAL ASSESSMENTS, AND ECONOMIC ASSESSMENTS.

(a) Requirement-

(1) IN GENERAL- The Secretary shall make publicly available, by online publication and in the Federal Register, 90 days before the publication of any draft, supplemental, final, or emergency rule under this Act, or any related environmental analysis or economic assessment, each scientific product the Secretary relied on in developing the rule, environmental analysis, or economic assessment.

(2) FEDERALLY FUNDED SCIENTIFIC PRODUCTS- For those scientific products receiving Federal funds in part, or in full, the Secretary shall also make publicly available--

(A) the raw data used for the federally funded scientific product; and

(B) background information of the authors of the scientific study.

(b) Compliance-

(1) IN GENERAL- Failure to make publicly available any scientific product 90 days prior to the publication of--

(A) any draft, or supplemental rule, environmental analysis, or economic assessment shall extend by one day the notice and comment period for each day such scientific study is not made available; or

(B) any final or emergency rule shall delay the effective date of the final rule by 60 days plus each day the scientific product is withheld.

(2) DELAY LONGER THAN 6 MONTHS- If the Secretary withholds any scientific product for longer than 6 months, the Secretary shall withdraw the rule, environmental analysis, or economic assessment.

* * * * *

TITLE VII – ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 722. STUDY OF THE `SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMANENT REGULATORY PROGRAM; STREAM BUFFER ZONES AND FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES' FINAL RULE PUBLISHED JUNE 30, 1983 (48 FED. REG. 30312 ET SEQ.), AND AMENDED SEPTEMBER 30, 1983 (48 FED. REG. 44777 ET SEQ.).

(a) Study- No later than 90 days after the date of the enactment of the STREAM Act, the Secretary of the Interior, in consultation with the Interstate Mining Compact Commission, shall contract with the National Academy of Sciences, for execution by the Board on Earth Sciences and Resources, to conduct a detailed, comprehensive study of the effectiveness of the `Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Stream Buffer Zones and Fish, Wildlife, and Related Environmental Values' Final Rule published June 30, 1983 (48 Fed. Reg. 30312 et seq.), and amended September 30, 1983 (48 Fed. Reg. 44777 et seq.), in protecting perennial and intermittent streams through the use of stream buffer zones.

(b) Report- Not later than 2 years after execution of the contract under subsection (a), the Board on Earth Sciences and Resources shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, appropriate Federal agencies, and the Governor of each of the States represented on the Interstate Mining Compact Commission a report containing--

(1) the findings of the study conducted under subsection (a); and

(2) recommendations, if any, regarding changes that would improve the effectiveness of the permitted activities as covered by the rule described in subsection (a).

(c) Funding- There is authorized to be appropriated to the Secretary of the Interior \$1,000,000 for fiscal year 2016 and \$1,000,000 for fiscal year 2017 for the purposes of this section.

(d) Prohibition on New Regulations- The Secretary may not issue any proposed or final regulations under this Act relating to stream buffer zones or stream protection until one year after the publication of the report described in subsection (b). If the Secretary proposes any such regulations after the date of publication of the report, the Secretary shall take into consideration the findings and recommendations of the report.

* * * * *

§1292. Other Federal laws

(a) Construction of chapter as superseding, amending, modifying, or repealing certain laws

Nothing in this chapter shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to-

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740).

(2) The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742) [30 U.S.C. 801 et seq.].

(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended [33 U.S.C. 1251 et seq.], the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

(4) The Clean Air Act, as amended [42 U.S.C. 7401 et seq.].

(5) The Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(6) The Refuse Act of 1899 (33 U.S.C. 407).

(7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661–666c).

(8) The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

(b) Effect on authority of Secretary or heads of other Federal agencies

Nothing in this chapter shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on land under their jurisdiction.

(c) Compliance with other federal laws.

Nothing in this Act authorizes the Secretary to take any action by rule, regulation, notice, or order that duplicates, enforces, or determines compliance with any of the Acts listed in subsection (1) or any regulation or rule promulgated thereunder.

[(c)](d) Cooperation

To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this chapter.

[(d)](e) Major Federal action

Approval of the State programs, pursuant to [section 1253\(b\) of this title](#), promulgation of Federal programs, pursuant to [section 1254 of this title](#), and implementation of the Federal lands programs, pursuant to [section 1273 of this title](#), shall not constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 ([42 U.S.C. 4332](#)). Adoption of regulations under [section 1251\(b\) of this title](#) shall constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 ([42 U.S.C. 4332](#)).
(Pub. L. 95–87, title VII, §702, Aug. 3, 1977, 91 Stat. 519 .)