

AMENDING THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT TO REPEAL CERTAIN DISCLOSURE REQUIREMENTS RELATED TO COAL AND MINE SAFETY

FEBRUARY 20, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4289]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4289) to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to repeal certain disclosure requirements related to coal and mine safety, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. REPEAL OF COAL AND MINE SAFETY DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78m-2) is hereby repealed.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relating to section 1503.

PURPOSE AND SUMMARY

On November 7, 2017, Representative Alex Mooney introduced H.R. 4289, to repeal Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), which requires mining companies to include information about mine safety and health violations, orders, citations, legal actions, and mining-related fatalities in quarterly and annual reports filed with the Securities and Exchange Commission (SEC). The disclosure require-

ments are largely based on the safety and health requirements that apply to mines under the Federal Mine Safety and Health Act of 1977, administered by the Mine Safety and Health Administration.

BACKGROUND AND NEED FOR LEGISLATION

To ensure investors can focus on information material to investment decisions, disclosures in SEC filings should include material information. But Section 1503 of the Dodd-Frank Act is among a handful of provisions of law that are using the federal securities laws to further unrelated political ends by requiring public companies to disclose certain information regardless of whether that information would be material to an investment decision.

Specifically, in this instance, Title XV of the Dodd-Frank Act now requires mining companies to include information about mine safety and health violations, orders, citations, legal actions, and mining-related fatalities in quarterly and annual reports filed with the SEC. The disclosure requirements are largely based on the safety and health requirements that apply to mines under the Federal Mine Safety and Health Act of 1977, which is administered by the Mine Safety and Health Administration (MSHA). On December 21, 2011, the SEC finalized its mine safety disclosure rule, which went into effect 30 days after publication in the Federal Register.

Even though much of this information is already reported to the MSHA and even though any such information that would be material to investment decision must be disclosed regardless, this duplicative disclosure regime was added to the Dodd-Frank Act to further political ends, regardless of the fact that it has been estimated to increase compliance costs on the industry by well over \$1 million annually, according to the SEC's cost-benefit analysis. The SEC estimated that approximately 100 companies would be affected by this Dodd-Frank provision and that compliance with the rule would involve 5,775 hours of company personnel time and approximately \$1.1 million for the services of outside professionals. Additionally, many of Section 1503's disclosure obligations are not material to an investment decision and could in fact confuse investors. As David Lynn, a former Chief Counsel of the SEC's Division of Corporation Finance, observed in an article in the *Journal of Business and Technology Law*:

[S]ome of the mine safety violations individually reported on Form 8-K following enactment of Section 1503 do not appear to be material in any way to understanding the issuer's mining operations or the risk profile of those mining operations. As a result, issuers have felt compelled to explain in the context of these disclosures that problems were corrected or there was no adverse impact on the operations as a result of the order or notice . . . the new requirement thus runs the risk of creating unnecessary 'noise' in the public reporting for issuers operating mines.

Further, in its Capital Markets report released in October 2017, issued pursuant to President Trump's Executive Order 13772, the Treasury Department recommended that Congress repeal Dodd-Frank Act Section 1503.

Finally, the resources spent by public companies to comply with this misplaced disclosure obligation could be redirected to invest-

ments to modernize mining, increase mining jobs and improve safety. H.R. 4289 makes this possible by repealing Section 1503 of the Dodd-Frank Act and the repeal will have no negative effect on whether a reasonable investor will receive material information.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 4289 on April 26, 2017 and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 14, 2017 and November 15, 2017 and ordered H.R. 4289 to be reported favorably to the House without amendment by a recorded vote of 33 yeas to 25 nays (Record vote no. FC-118), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 33 yeas to 25 nays (Record vote no. FC-118), a quorum being present.

Record vote no. FC-118

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez			
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer				Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4289 will reduce burdensome regulatory and disclosure requirements on public companies and ensure that the federal securities laws are being used to provide material information to investors, by repealing the mining disclosure requirement set forth in the Dodd-Frank Act.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 16, 2018.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4289, a bill to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to repeal certain disclosure requirements related to coal and mine safety.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4289—A bill to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to repeal certain disclosure requirements related to coal and mine safety

Under current law, the Securities and Exchange Commission (SEC) requires certain companies that operate, or have subsidiaries

that operate, coal or other mines to report information about their compliance with federal health and safety standards. H.R. 4289 would repeal the requirement for companies to disclose that information to the SEC.

Using information from the SEC, CBO estimates that implementing H.R. 4289 would have no significant effect on the agency's costs and operations. Moreover, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that any net effect on discretionary spending from implementing the bill would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 4289 could decrease civil penalties (which are recorded as revenues) that the SEC could collect under current law for failure to report coal and mine safety information. However, CBO estimates that any such reductions would be insignificant over the 2018–2027 period. Because the bill would affect revenues, pay-as-you-go procedures apply. Enacting H.R. 4289 would not affect direct spending.

CBO estimates that enacting H.R. 4289 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Repeal of coal and mine safety disclosure requirements

This section amends the Dodd-Frank Wall Street Reform and Consumer Protection Act by repealing Section 1503, to require mining companies to include information about mine safety and health violations, orders, citations, legal actions, and mining-related fatalities in quarterly and annual reports filed with the Securities and Exchange Commission.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Dodd-Frank Wall Street Reform and Consumer Protection Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

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TITLE XV—MISCELLANEOUS PROVISIONS

Sec. 1501. Restrictions on use of United States funds for foreign governments; protection of American taxpayers.

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【Sec. 1503. Reporting requirements regarding coal or other mine safety.】

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TITLE XV—MISCELLANEOUS PROVISIONS

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【SEC. 1503. REPORTING REQUIREMENTS REGARDING COAL OR OTHER MINE SAFETY.】

【(a) REPORTING MINE SAFETY INFORMATION.—Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o) and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after the date of enactment of this Act, the following information for the time period covered by such report:

【(1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

【(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

【(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

【(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

【(D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2));

【(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a));

【(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and

【(G) the total number of mining-related fatalities.

【(2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of—

【(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

【(B) the potential to have such a pattern.

[(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

[(b) REPORTING SHUTDOWNS AND PATTERNS OF VIOLATIONS.—Beginning on and after the date of enactment of this Act, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8-K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

[(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

[(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

[(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

[(B) the potential to have such a pattern.

[(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after the date of enactment of this Act.

[(d) COMMISSION AUTHORITY.—

[(1) ENFORCEMENT.—A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or the rules or regulations issued thereunder.

[(2) RULES AND REGULATIONS.—The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

[(e) DEFINITIONS.—In this section—

[(1) the terms “issuer” and “securities laws” have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

[(2) the term “coal or other mine” means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

[(3) the term “operator” has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

[(f) EFFECTIVE DATE.—This section shall take effect on the day that is 30 days after the date of enactment of this Act.]

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MINORITY VIEWS

On April 5, 2010, an explosion ripped through the Upper Big Branch mine in Montcoal, West Virginia, resulting in the loss of 29 miners. As stated in a letter to the Committee dated November 14, 2017 from Cecil Roberts, President of the United Mine Workers of America, “One of the many areas of corporate malfeasance that was laid bare after that disaster was the lack of transparency by the mine’s corporate owner . . . regarding its repeated and willful pattern of mine safety and health violations.” This tragic loss of life highlighted the need to do more to make workplace health and safety a top priority of all coal companies.

It also became clear that shareholders have a direct and material interest in the safety record of any mining company in which they invest, given that safety has as much an impact on a company’s long-term financial health as its production. In an effort to make mine safety and health statistics for operators of U.S. and U.S. territorial mines more transparent to the public and to investors, Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) included comprehensive new reporting requirements for publicly held mining operations.

Specifically, Section 1503 of the Dodd-Frank Act requires covered companies to report to the Securities and Exchange Commission (SEC) certain enforcement actions, including significant and substantial violations; unwarrantable failure and flagrant violations; closure orders for failure to abate or for an imminent danger; and pattern of violation notices and orders. Companies must also disclose the total number of fatalities, the total amount of assessed penalties, and information about their cases pending before the Federal Mine Safety and Health Review Commission.

The SEC issued its final rule on Section 1503 in December 21, 2011, and nearly six years into these requirements, affected companies appear to have adapted well to the additional disclosure requirements—with little evidence of challenge to the SEC or difficulty in following the rules. Furthermore, based on the SEC’s publicly available review correspondence, to date, the SEC has had little to criticize with respect to companies’ mine safety disclosures under Section 1503.

Mine safety and health issues are of critical importance to workers. They are also important to the operations and, therefore, the financial performance of companies operating in the mining industry. The public, investors, and workers have every right to know if a company is jeopardizing its workforce in order to maximize profits. For all these reasons, we strongly oppose H.R. 4289, which would repeal a number of important disclosure requirements regarding mine safety and health violations.

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