



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 872

[Docket No. OSM-2025-0014;
S1D1S SS08011000 SX064A000 256S180110;
S2D2S SS08011000 SX064A000 25XS501520]

RIN 1029-AC98

Minimum Program Make Up Funds

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule revises the Federal regulations to remove references to prior balance replacement funds and to rescind the phase-in schedule for minimum program make up fund distributions between October 1, 2007, and October 1, 2010.

DATES: The final rule is effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], unless significant adverse comments are received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comments are received, notice will be published in the *Federal Register* before the effective date either withdrawing the rule or issuing a new final rule that responds to significant adverse comments.

ADDRESSES: You may submit comments by one of the following methods:

- Electronically: Go to the Federal eRulemaking Portal: <https://www.regulations.gov> and search for Docket Number OSM-2025-0014. Follow the instructions for submitting comments.
- By hard copy: Submit by U.S. mail to Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Attn: James Tyree, 1849 C Street NW, Mail Stop 4557, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James Tyree, Chief, Division of Regulatory Support, (202) 208-4479, jtyree@osmre.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Federal regulations at 30 CFR 872.27(a)(1) and (2) refer to prior balance replacement funds, which are moneys from the United States Treasury's General Fund that replaced State or Tribal share funds that were allocated before October 1, 2007, but never appropriated by Congress. Section 411(h)(1) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) required the Office of Surface Mining Reclamation and Enforcement (OSMRE) to distribute prior balance replacement funds to eligible States and Tribes for seven years, beginning October 1, 2008. As the distribution of prior balance replacement funds is complete, the Department of the Interior (Department) and OSMRE have determined that the references to prior balance replacement funds should be removed and that the remaining language in each paragraph should be lightly edited to improve clarity and ensure correct grammar and punctuation. To the extent States or Tribes may have any unspent prior balance replacement funds, those funds will be governed by the regulations that were in place at the time of the initial grant award.

In addition, the Federal regulations at 30 CFR 872.27(a)(2)(i) and (ii) contain the phase-in schedule for minimum program make up fund distributions between October 1, 2007, and October 1, 2010. Minimum program make up funds are moneys that OSMRE distributes to eligible States and Tribes to make up the difference between their total distribution of other funds and \$3 million. Section 401(f)(5)(B) of SMCRA required OSMRE to phase in the amount of minimum program make up funds distributed to

eligible States and Tribes over four years, beginning October 1, 2007. As the phase-in dates for minimum program make up funds have passed, the Department and OSMRE have determined that these provisions should be rescinded because they are obsolete. Existing paragraphs (a)(2)(iii) and (a)(2)(iv) will be redesignated as paragraphs (a)(2)(i) and (a)(2)(ii).

The Department has determined that these reasons, independently and alone, justify amending 30 CFR 872.27(a)(1) and (2) and rescinding 30 CFR 872.27(a)(2)(i) and (ii). The Department has no interest in maintaining a rule that is obsolete.

The Department is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA, 5 U.S.C. 551-559) generally requires agencies to engage in notice and comment rulemaking, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* § 553(b)(B). The Department has determined that notice and comment are unnecessary because this rule is noncontroversial; of a minor, technical nature; involves little agency discretion; and is unlikely to receive any significant adverse comments. Significant adverse comments are those that oppose the amendment or rescission of the regulatory language and raise, alone or in combination, (1) reasons why the amendment or rescission of the regulatory language is inappropriate, including challenges to the amendment’s or rescission’s underlying premise, or (2) serious unintended consequences of the amendment or rescission. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

Procedural Determinations

Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule does not result in a taking of private property or otherwise have regulatory takings implications under Executive Order 12630. The rule revises the Federal regulations to amend or remove obsolete regulatory language; therefore, the rule will not result in private property being taken for public use without just compensation. A takings implication assessment is not required.

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866, while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department developed this rule in a manner consistent with these requirements.

Executive Order 12988—Civil Justice Reform

This direct final rule complies with the requirements of Executive Order 12988. Among other things, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation;
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13132—Federalism

Under the criteria of section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. The Department evaluated this direct final rule under Executive Order 13175 and the Department's consultation policies and determined that it has no substantial direct effects on Federally recognized Indian tribes and that consultation under the Department's Tribal consultation policies is not required. The rule merely revises the Federal regulations to amend or remove obsolete regulatory language.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This direct final rule is not a significant energy action as defined in Executive Order 13211. Therefore, a Statement of Energy Effects is not required.

National Environmental Policy Act

This direct final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) is not required because this rule is covered by a categorical exclusion applicable to regulatory functions “that are of an administrative, financial, legal, technical, or procedural nature.” 43 CFR 46.210(i). In addition, the Department has determined that this rule does not involve any of the

extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Paperwork Reduction Act

This rule does not impose any new information collection burden under the Paperwork Reduction Act. OMB previously approved the information collection activities contained in the existing regulations and assigned OMB control number 1029-0054. This rule does not impose an information collection burden because the Department is not making any changes to the information collection requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601-612) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). As the Department is not required to publish a notice of proposed rulemaking for this direct final rule, the RFA does not apply.

Congressional Review Act

This rule is not a major rule under the Congressional Review Act, 5 U.S.C. 804(2). Specifically, the direct final rule: (a) will not have an annual effect on the economy of \$100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. The rule merely revises the Federal regulations to amend or remove obsolete regulatory language. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR part 872

Indians-lands, Surface mining, Underground mining

Leslie Shockley Beyer,
Assistant Secretary,
Land and Minerals Management

For the reasons stated in the preamble, the Department of the Interior amends 30 CFR part 872 as follows:

PART 872 — MONEYS AVAILABLE TO ELIGIBLE STATES AND INDIAN TRIBES

1. The authority citation for part 872 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 117-58.

2. In § 872.27, revise paragraphs (a)(1) and (2) to read as follows:

§ 872.27 How does OSM distribute and award minimum program make up funds?

(a) * * *

(1) We calculate your total distribution under this part by adding your applicable State or Tribal share funds distribution (§ 872.14 or § 872.17) and your historic coal funds distribution (§ 872.21). If the sum of these funds is less than \$3 million, we calculate the amount of minimum program make up funds to add to your distribution under this section to increase it to that level.

(2) For each Federal fiscal year, we add minimum program make up funds to your combined distribution of State or Tribal share and historic coal funds as shown in the following table:

For each of the Federal fiscal years beginning . . .	The amount of minimum program make up funds we add to your distribution will be . . .
(i) October 1, 2011 and continuing through September 30, 2035	100 percent of the amount that we calculated should be added under paragraph (a)(1) of this section as long as you have at least \$3 million of Priority 1 and 2 coal problems remaining.
(ii) October 1, 2035 and thereafter	to the extent funds are available, 100 percent of the amount that we calculated should be added under paragraph (a)(1) until you have less than \$3 million of Priority 1 and 2 coal problems remaining.

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