



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 872, 874, 875, 879, 886, and 887

[Docket No. OSM-2025-0016; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

RIN 1029-AD00

Prior Balance Replacement 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 rescind references 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, and to make minor conforming language changes.

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-2025-0016. 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 chapter VII, subchapter R contain various references 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 all remaining references to prior balance replacement funds in 30 CFR chapter VII, subchapter R should be rescinded and that the remaining language in 30 CFR 872.21(b) 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 872.35(a) currently refer to a \$490 million cap on the amount of funds available each fiscal year to be transferred by the

Secretary of the Treasury to the Secretary of the Interior for payments under section 402(i) of SMCRA. However, the Bipartisan American Miners Act of 2019 amended section 402(i) of SMCRA to raise the cap on the amount of Treasury funds available for transfer from \$490 million to \$750 million. The Department and OSMRE have determined that 30 CFR 872.35(a) should be amended to be consistent with SMCRA and accurately reflect the \$750 million cap.

The Department has determined that these reasons, independently and alone, justify amending the regulatory language and rescinding all remaining references to prior balance replacement funds in 30 CFR chapter VII, subchapter R. The Department has no interest in maintaining rules that are obsolete or inconsistent with applicable law.

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 amends and rescinds 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 remove or amend 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 numbers 1029-0054, 1029-0113, 1029-0103, 1029-0059, and 1029-0107. 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 remove or amend obsolete regulatory language that is no longer used. 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

30 CFR part 872

Indians-lands, Surface mining, Underground mining

30 CFR par 874

Indians-lands, Surface mining, Underground mining

30 CFR part 875

Indians-lands, Reporting and recordkeeping requirements, Surface mining, Underground mining

30 CFR part 879

Indians-lands, Reporting and recordkeeping requirements, Surface mining, Underground mining

30 CFR part 886

Grant programs-natural resources, Indians-lands, Reporting and recordkeeping requirements, Surface mining, Underground mining

30 CFR part 887

Grant programs-natural resources, Insurance, 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 parts 872, 874, 875, 879, 886, and 887 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 § 872.21, revise paragraph (b) to read as follows:

(b) Historic coal funds also include:

(1) Moneys we reallocated under section 411(h)(1)(A)(ii) of SMCRA, which will be available to supplement grants beginning with Federal fiscal year 2036; and

(2) Moneys we reallocate based on certified in lieu funds distributed under sections 401(f)(3)(A)(i) and 411(h)(4) of SMCRA and § 872.32 of this chapter, which will be available to supplement grants in Federal fiscal years 2009 through 2035.

3. In § 872.26, revise paragraphs (b)(3) and (b)(4) to read as follows:

* * * * *

(b) * * *

(1) * * *

(2) * * *

(3) The total amount you receive annually from State share funds (§ 872.14) or Tribal share funds (§ 872.17) and historic coal funds (§ 872.21) must be less than \$3 million; and

(4) You must need more than the total of funds you will receive from State or Tribal share and historic coal funds to reclaim Priority 1 and 2 coal problems under sections 403(a)(1) and (2) of SMCRA in your State or on Indian lands within your jurisdiction.

* * * * *

4. In section 872.35, revise paragraph (a) to read as follows:

§ 872.35 When will OSMRE reduce the amount of certified in lieu funds distributed to you?

(a) In any fiscal year in which the amount of Treasury funds required to be transferred under § 872.33 of this chapter and under section 402(i)(1) of SMCRA exceeds the maximum annual limit of \$750 million, we will adjust the amount of these payments to reduce them to the level of the cap. Each distribution or transfer for the FY will be reduced by the same percentage.

* * * * *

PART 874 GENERAL RECLAMATION REQUIREMENTS

5. The authority citation for part 874 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 *et seq.*

6. In § 874.12, revise paragraphs (c) and (e) to read as follows:

* * * * *

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be used.

* * * * *

(e) An uncertified State or Indian tribe may expend funds made available under paragraphs 402(g)(1) and (5) of SMCRA for the reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraphs (a), (b), or (c) of this section that qualify as a Priority 1 or 2 site under section 403(a) of SMCRA.

* * * * *

PART 875 CERTIFICATION AND NONCOAL RECLAMATION

7. The authority citation for part 875 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 *et seq.*

8. In § 875.11, revise paragraph (b)(2) introductory text to read as follows:

* * * * *

(b) * * *

(1) * * *

(2) You may use certified in lieu funds distributed to you under section 411(h)(2) of the Act to—

* * * * *

3. In § 875.14, revise paragraph (b) to read as follows:

* * * * *

(b) If eligible coal problems are found or occur after certification, you must submit to us a plan that describes the approach and funds that will be used to address those problems in a timely manner. You may address any eligible coal problems with the certified in lieu funds that you have already received or will receive from § 872.32 of this chapter. Any

coal reclamation projects that you do must conform to sections 401 through 410 of SMCRA and part 874 of this chapter.

PART 879 ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

9. The authority citation for part 879 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 *et seq.*

10. In § 879.11, revise paragraphs (a)(2) and (b) introductory text to read as follows:

(a) ***

(1) * * *

(2) You, an uncertified State or Indian tribe or a certified State or Indian tribe conducting noncoal reclamation projects under part 875 of this chapter, may acquire land adversely affected by past coal mining practices with moneys from the Fund or with certified in lieu funds provided under § 872.32 of this chapter, provided that we first approve the acquisition in writing.

* * * * *

(b) You, an uncertified State or Indian tribe or a certified State or Indian tribe conducting noncoal reclamation projects under part 875 of this chapter, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with certified in lieu funds provided under § 872.32 of this chapter. We, OSMRE, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

* * * * *

PART 886 RECLAMATION GRANTS FOR UNCERTIFIED STATES AND INDIAN TRIBES

11. The authority citation for part 886 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 *et seq.*

12. In § 886.12, revise paragraph (c) to read as follows:

* * * * *

(c) You may use grant funds as established in this chapter for each type of funds you receive in your AML grant. You may use State share funds as provided in § 872.16 of this chapter; Tribal share funds as in § 872.19 of this chapter; historic coal funds as in § 872.23 of this chapter; minimum program make up funds as in § 872.28 of this chapter; and Federal expense funds as in § 872.25 of this chapter and in the appropriation.

* * * * *

13. In § 886.20, revise paragraph (a)(3) to read as follows:

(a) * * *

(1) * * *

(2) * * *

(3) We make unused funds of all other types available for re-award to the same State or Indian tribe to which they were originally distributed. This includes historic coal funds under § 872.21 of this chapter and minimum program make up funds under § 872.26 of this chapter.

* * * * *

PART 887 SUBSIDENCE INSURANCE PROGRAM GRANTS

14. The authority citation for part 887 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 *et seq.*

15. Revise § 887.11 to read as follows:

You are eligible for grants under this part if you are a State or Indian tribe with a reclamation plan approved under part 884 of this chapter. If you are uncertified, you must have State share funds available under § 872.14 of this chapter or Tribal share funds available under § 872.17 of this chapter. If you have certified completion of coal reclamation under section 411(a) of SMCRA, you must have certified in lieu funds

available under § 872.32 of this chapter, if the State legislature or Tribal council has established this purpose.

[FR Doc. 2025-20831 Filed: 11/21/2025 8:45 am; Publication Date: 11/24/2025]