



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 816

[Docket ID: OSM-2025-0025 S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

RIN 1029-AD03

Backfilling and Grading

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 an obsolete regulation that was suspended by the Secretary of the Interior in 1992 and that has been inoperative for 33 years. The regulations prescribed time and distance performance standards for the completion of rough backfilling and grading for surface mining operations.

Dates: The amendments in this direct final rule lifting the suspension of 30 CFR 816.101 and removing the section are effective **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, unless significant adverse comments are received by **[INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. If significant adverse comments are received, OSMRE will publish a timely withdrawal or issue 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-2025-0025. 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:

Section 515(b)(16) of SMCRA, 30 U.S.C. 1265(b)(16), provides for general performance standards to require surface coal mining and reclamation operations to “insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations.” OSMRE’s initial permanent program regulations, promulgated on March 13, 1979, included a section 816.101, which provided time and distance schedules as general requirements for rough backfilling and grading (44 FR 14902, at 15411).

In a 1983 rulemaking, the Secretary made several changes to the regulations governing contemporaneous reclamation, including removing section 816.101, concluding that “‘contemporaneous reclamation’ is a relative term which must be interpreted by each State on the basis of the mining conditions in its territory.” 48 FR 23356 (May 24, 1983). These regulatory changes were challenged, *In re Permanent Surface Mining Regulation*, 21 ERC 1724, 1744-1746 (D.D.C. October 1, 1984), and the District Court for the District of Columbia remanded related regulations but not section 816.101. OSMRE appealed the district court ruling. On appeal, the D.C. Circuit held that SMCRA does not require specific regulations related to contemporary reclamation

performance standards but cautioned that if there is no need to “flesh out” the statute, the agency must “flesh out” its explanation for why additional regulation is not necessary. *Nat’l Wildlife Fed’n v. Hodel*, 839 F.2d 694, 734-736 (1988).

Nonetheless, in 1991, OSMRE promulgated new time and distance performance standards for the completion of rough backfilling and grading for surface mining operations that still appear at 816.101. 56 FR 65612 (Dec. 17, 1991). Unlike prior versions and the text of the proposed rule, the 1991 rule did not contain flexibility for States to develop alternative State-specific schedules. These regulations were immediately challenged by the National Coal Association and the American Mining Congress. *Nat’l Coal Ass’n and Am. Mining Congress v. DOI*, Civ. No. 92-0408-CRR (D.D.C.). On April 16, 1992, the district court approved a joint stipulation of dismissal in which the Secretary agreed to suspend 30 CFR 816.101 and reconsider the issues raised in the rulemaking. Over 30 years ago, in 1992, the Secretary suspended, but did not remove from the Code of Federal Regulations, section 816.101. 57 FR 33874 (Jul. 31, 1992). OSMRE now removes this unnecessary and unlawful regulatory provision from the Federal regulations.

The Department has determined that this reason, independently and alone, justifies rescission of 30 CFR 816.101. The Department has no interest in maintaining rules that are 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 rescission of the regulations and raise, alone or in combination, (1) reasons why the rescission of the regulations is inappropriate, including challenges to the rescission's underlying premise, or (2) serious unintended consequences of the 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 rescinds obsolete regulatory provisions; 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 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 1029-0094. 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 obsolete 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 in 30 CFR part 816

Environmental protection, Reporting and recordkeeping requirements, Surface 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 816 as follows:

**PART 816 PERMANENT PROGRAM PERFORMANCE STANDARDS –
SURFACE MINING ACTIVITIES**

1. The authority citation for part 816 continues to read as follows:

AUTHORITY: 30 U.S.C. 1201 *et seq.* and sec 115 of Pub. L. 98-146

§ 816.101 [Removed and reserved]

2. Lift the suspension of § 816.101 and remove and reserve the section.

[FR Doc. 2025-21440 Filed: 11/26/2025 8:45 am; Publication Date: 11/28/2025]