



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Parts 816 and 817

[Docket No. OSM-2025-0010; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

RIN 1029-AC92

#### Rescission of Portions of Permanent Program Performance Standards Related to Siltation Structures

**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 paragraphs that required that all surface drainage from the disturbed area pass through a siltation structure before leaving the permit area. These paragraphs were struck down on judicial review because the court found that the Office of Surface Mining Reclamation and Enforcement (OSMRE) had not articulated a sufficient basis for the rule under the Administrative Procedure Act and that OSMRE had not sufficiently demonstrated that siltation structures were the best technology currently available.

**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 which 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-2025-0010. 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, Division of Regulatory Support, (202) 208-4479, [jtyree@osmre.gov](mailto: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:** Paragraphs (b)(1) from both 30 CFR 816.46 and 30 CFR 817.46 require that “additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using best technology currently available.” Paragraphs (b)(2) of sections 816.46 and 817.46 required that all surface drainage from the disturbed area pass through a siltation structure before leaving the permit area. Forty years ago, paragraphs (b)(2) of sections 816.46 and 817.46 were struck down on judicial review because the court found that OSMRE had not articulated a sufficient basis for the rule under the Administrative Procedure Act and that OSMRE had not sufficiently demonstrated that siltation structures were the best technology currently available in every case. *See In re Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519, 1566-1568 (D.D.C. 1985).

In response to the court’s holding, OSMRE suspended paragraphs (b)(2) from both 30 CFR 816.46 and 30 CFR 817.46 on November 20, 1986, but did not remove them from the Code of Federal Regulations. 51 FR 41961 (Nov. 20, 1986). To avoid

confusion that might result from the continuing publication of those rules in the Federal regulations, over a decade later, OSMRE attempted to remove paragraphs (b)(2) from sections 816.46 and 817.46 and redesignate the remaining paragraphs of those sections accordingly. 73 FR 75814, 75854 (Dec. 12, 2008). At that time, however, OSMRE omitted the words “lift the suspension” prior to directing the removal of the paragraphs, which had the effect of rendering the removal of those paragraphs inoperable. On September 29, 2010, OSMRE published technical amendments, that among other things lifted the suspension and removed the paragraphs. 75 FR 60272. However, when the Stream Buffer Rule was vacated, a final rule was published that erroneously reinstated the suspended provisions from the 2008 rule albeit with a sentence noting the suspension instead of an actual suspension. *See, e.g.*, 79 FR 76227 (Dec. 22, 2014). OSMRE attempted to remove the provisions again as part of the Stream Protection Rule. 81 FR 93392 (Dec. 20, 2016). However, that rule was later disapproved by Congress and the prior language was reinstated. 82 FR 54979 (Nov. 17, 2017).

Upon reviewing these regulations, the 1985 court decision, and the various *Federal Register* notices attempting to rescind these regulations, OSMRE has determined that they should finally be rescinded because they were struck down upon judicial review and paragraph (b)(1) in sections 816.46 and 817.46 ensure that the best technology currently available, which may include siltation structures, is used to prevent, to the extent possible, additional contributions of suspended solids sediment to streamflow or runoff outside the permit area. Additionally, because the suspension was lifted in 2010, no further action is necessary to lift the suspension at this time. This reason, independently and alone, justifies rescission of paragraphs (b)(2) from both 30 CFR 816.46 and 30 CFR 817.46. OSMRE has no interest in maintaining regulations that have been struck down by court order.

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 no agency discretion; and is unlikely to receive any significant adverse comments. Significant adverse comments are those that oppose the rescission of the rule and raise, alone or in combination, (1) reasons why the rescission of the rule 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 a regulatory provision suspended by a court since 1985; 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 language made obsolete by a 1985 court ruling.

*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 1029-0047. 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 an obsolete provision 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 816**

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

##### **30 CFR 817**

Environmental protection, Reporting and recordkeeping requirements, 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 816 and 817 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.

**§ 816.46 [Amended]**

2. Amend § 816.46, by removing paragraph (b)(2), and redesignating paragraphs (b)(3) through (6) as paragraphs (b)(2) through (5).

**PART 817 – PERMANENT PROGRAM PERFORMANCE STANDARDS –  
UNDERGROUND MINING ACTIVITIES**

3. The authority citation for part 817 continues to read as follows:

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

**§ 817.46 [Amended]**

4. Amend 817.46, by removing paragraph (b)(2), and redesignating paragraphs (b)(3) through (7) as paragraphs (b)(2) through (6).