



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

[Docket No. OSM-2025-0009; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

RIN 1029-AC91

Rescission of Portions of Permanent Program Performance Standards Regulating Subsidence Controls for Underground Mines

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule lifts the suspension and revises the Federal regulations to remove paragraphs related to establishing a rebuttable presumption of causation for damage to any non-commercial building or occupied residential dwelling or structure related thereto that occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land. These paragraphs were struck down on judicial review because the court found that the Office of Surface Mining Reclamation and Enforcement (OSMRE) failed to provide adequate support to justify its presumption that damage was the result of mining within the angle of draw.

DATES: The amendments in this direct final rule lifting the suspension at 30 CFR 817.(c)(4)(i) through (iv) and amending the section are effective **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, without further action, unless significant adverse comments are received by **[INSERT DATE 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-2025-0009]. 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. 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 (c)(4)(i) through (c)(4)(iv) of 30 CFR 817.121 provided that if damage to any non-commercial building or occupied residential dwelling or structures related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. Once the presumption was triggered, the burden of going forward shifted to the mine operator to offer evidence that the damage was attributable to another cause.

Over 25 years ago, these provisions were struck down on judicial review because the court found that OSMRE failed to provide adequate support to justify its presumption that damage was the result of mining within the angle of draw. *Nat'l Mining Ass'n v. Babbitt*, 172 F.3d 906, 912 (1999). In response to the court's holding, OSMRE suspended

these provisions on December 22, 1999, but did not remove the language from the Code of Federal Regulations. 64 FR 71652, 71653 (Dec. 22, 1999). OSMRE attempted to lift the suspension and remove these provisions as part of the Stream Protection Rule in 2016 (81 FR 93418 (Dec. 20, 2020)). However, all proposed changes to OSMRE's regulations under the Stream Protection Rule were disapproved by Joint Resolution under the Congressional Review Act. Consequently, these removed provisions were reinstated. 82 FR 54924 (Nov. 17, 2017). Although we recognize that the Congressional Review Act at 5 U.S.C. 801(b)(2) prevents OSMRE from reissuing the Stream Protection Rule in substantially the same form, we find that lifting the suspension and removing these provisions regarding a rebuttable presumption of causation is not substantially the same as the Stream Protection Rule because of the housekeeping and ministerial nature of removing an inoperative regulation.

Upon reviewing these regulations, OSMRE has determined that the suspension should be lifted and paragraphs (c)(4)(i) through (c)(4)(iv) of 30 CFR 817.121 should be rescinded because they were vacated by court order in 1999, and it is confusing to allow these inoperative provisions to remain in OSMRE's regulations. This reason, independently and alone, justifies rescission of paragraphs (c)(4)(i) through (c)(4)(iv) of 30 CFR 817.121. OSMRE has no interest in maintaining regulations that have been vacated 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 little 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 vacated by a court in 1999; 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 1999 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 1029-0048. 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 in 30 CFR Part 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 part 817 as follows:

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

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

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

2. In § 817.121:

a. Lift the suspension of paragraphs (c)(4)(i) through (iv); and

b. Revising paragraph (c)(4).

The revision reads as follows:

§ 817.121 Subsidence control.

* * * * *

(c) * * *

(4) *Rebuttable presumption of causation by subsidence.* In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the regulatory authority.

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