



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; confirmation of effective date.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is confirming the effective date of January 27, 2026, for the direct final rule “Rescission of Portions of Permanent Program Performance Standards Related to Siltation Structures,” published on November 28, 2025. The direct final rule removes paragraphs that required that all surface drainage from the disturbed area pass through a siltation structure before leaving the permit area. These provisions were struck down by a reviewing court in 1985 and have no legal effect but were never removed from the Code of Federal Regulations. During the comment period, OSM received one substantive comment. That comment was not a significant adverse comment because it did not effectively challenge the rule’s underlying premise or approach or explain why the rule would be inappropriate without a change. As a result, the comment does not warrant a delay of the effective date.

DATES: The effective date of the rule is January 27, 2026.

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: The direct final rule published at 90 FR 54575 will become effective on January 27, 2026. OSM received one substantive comment on the direct final rule during the comment period, but that comment was not a significant adverse comment and does not warrant withdrawal or the issuance of a new final rule because the commenter misunderstands the effect of the rule and OSM's rationale for pursuing this revision through a direct final rule.

The commenter first argues that the removal of 30 CFR 816.46(b)(2) and 817.46(b)(2) are not appropriate through a direct final rule because the provisions relate to the prevention of damage to the hydrologic balance outside the permit area and that any OSM rule related to water quality is controversial due to concerns about water quality degradation from coal mines. However, this comment misunderstands the reason OSM is removing these provisions. Despite defending these provisions in court, the United States District Court for the District of Columbia remanded these provisions to OSM on July 15, 1985, because the court found OSM's rationale for these provisions flawed, and OSM later suspended them. These provisions have been suspended for forty years and removing them from the Code of Federal Regulations now will have no effect on whether or not siltation structures are required on surface coal mining and reclamation operations because these provisions are not enforceable and have no legal effect.

The commenter noted that the court in the *In Re Permanent Surface Mining Regulation Litigation* case did not determine that the Secretary lacked authority to determine what technology or technologies constituted the best technology currently available and argue that, because OSM does not lack authority to determine what technology constituted the best technology currently available, OSM should not remove

the inoperative language without conducting notice and comment rulemaking. While it is true that OSM is not prohibited from conducting a rulemaking on this topic, the language to be removed in this direct final rule has been inoperative for 40 years. With this direct final rule, OSM is not proposing a change to the regulations in effect, it is merely removing language that has no application and could be confusing to someone without deep familiarity with the history of the SMCRA implementing regulations and esoteric procedures related to the Code of Federal Regulations. Removing inoperative language will not impact the current requirements of SMCRA, the Federal regulations, or impact water quality on or near surface coal mines.

Finally, the commenter alleged that removal of language vacated by a court through a direct final rule is not appropriate because it does not make notice and comment under 5 U.S.C. 553 “impracticable, unnecessary, or contrary to the public interest.” OSM disagrees. Certainly, if OSM were to propose new language to address the court’s concerns, notice and comment rulemaking would be necessary. However, here, the provision cannot be enforced, has been suspended for forty years, and is merely being removed to avoid confusion. To invite comment on the deletion of language invalidated by a court forty years ago would be a waste of the public’s time.

After considering this comment, OSM has determined that it is not a significant adverse comment and does not warrant delaying the effective date of this final rule.

Lanny E. Erdos,
Acting Assistant Secretary,
Land and Minerals Management