



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; 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 Regulating Subsidence Controls for Underground Mines,” published on November 28, 2025. The direct final rule lifts the suspension of the regulatory provision 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. 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 published November 28, 2025, at 90 FR 54577 is confirmed as 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 54577 will become effective on January 27, 2026.

Over 25 years ago, the provisions identified in the direct final rule were struck down on judicial review because the court found that OSM 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). As noted in the November 28, 2025, direct final rule and request for comments, OSMRE 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 the Federal regulations.

At the close of the comment period, OSM received one comment on this rule expressing opposition to the elimination of the suspended language without notice and comment rulemaking. The commenter argued that deleting the language creating a rebuttable presumption of causation for damage to any non-commercial building or occupied dwelling or structure would be controversial because the result would be to add to the evidentiary burden of a citizen seeking redress for damage occurring near an underground coal mine. But this argument is flawed and relies on a misunderstanding of

the facts. Despite defending this provision in court, a judge found that OSM failed to provide adequate support to justify its presumption that damage was the result of mining within the angle of draw and remanded this provision to OSM. OSM then suspended this provision on December 22, 1999. This provision has been suspended for more than 25 years and removing it from the Code of Federal Regulations now would have no effect on the evidentiary burden of a citizen seeking redress for damage occurring near an underground coal mine because the provision is not enforceable and has no legal effect.

The commenter next alleged that because OSM has the authority to create a rebuttable presumption of causation, that OSM should not be allowed to remove the inoperative language without conducting notice and comment rulemaking. While it is true that OSM could conduct a new rulemaking on this topic, the language to be removed in this direct final rule is inoperative and has been so for more than 25 years. With this direct final rule, OSM is not proposing a change to the regulations in effect or foreclosing a rulemaking on this topic in the future, but 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 have any impact on the current requirements of SMCRA, the Federal regulations, or on the evidentiary burden of a citizen seeking redress for damages occurring near an underground coal mine.

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 more than 25 years, and is

merely being removed to avoid confusion. To invite comment on the deletion of language invalidated by a judge more than 25 years ago would be a waste of the public's time.

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

Thomas D. Shope,
Acting Deputy Director,
Office of Surface Mining Reclamation and Enforcement

[FR Doc. 2026-01622 Filed: 1/26/2026 8:45 am; Publication Date: 1/27/2026]