



## 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; confirmation of effective date.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is confirming the effective date of the direct final rule entitled, “Backfilling and Grading,” which was originally published on November 28, 2025. The direct final rule rescinded a regulation that prescribed time and distance performance standards for the completion of rough backfilling and grading for surface mining operations that were suspended by the Secretary of the Interior in 1992 but never removed from the Code of Federal Regulations. During the comment period, OSM received two comments that required further review and consideration to determine whether the comments warranted a response or the withdrawal or modification of the final rule. After further review and consideration, OSM determined that these comments were not significant adverse comments and is confirming the effective date of this rule.

**DATES:** The effective date of March 30, 2026, for the direct final rule published at 90 FR 54573 (Nov. 28, 2025), delayed at 91 FR 3374 January 27, 2026, is confirmed.

**FOR FURTHER INFORMATION CONTACT:** James Tyree, Chief, 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:** The direct final rule, which was published at 90 FR 54573 (Nov. 28, 2025), included a 30-day public comment period that ended on December 29, 2025. The original effective date of the direct final rule was January 27, 2026. However, OSM received two timely comments on the rule, and OSM decided to extend the original effective date to allow for sufficient time to review and consider those comments to determine whether they were significant adverse comments warranting a response or withdrawal or modification of the final rule. Consequently, on January 27, 2026, OSM published a *Federal Register* notice delaying the effective date for 60 days until March 30, 2026.

The two timely comments expressed opposition to OSM's decision to lift the suspension of 30 C.F.R. § 816.101 and remove the suspended language. Commenters generally disagreed with OSM's characterization of the provision as unnecessary and unlawful and alleged that OSM's final rule is major, controversial, and should be reconsidered with notice and comment rulemaking. In addition to receiving the two timely comments, in March 2026, long after the close of the comment period, OSM received one additional comment; due to the untimely nature of this comment, it was not considered.

After careful review of the timely comments, and discussed in greater detail below, OSM determined that the comments are not significant adverse comments warranting withdrawal or modification of the final rule because the commenters misunderstand the intent and effect of this final rule. Contrary to the commenters' allegations, removing inoperative language will not have any impact on the current requirements of SMCRA and the Federal regulations or on OSM's ability in the future to promulgate regulations setting forth time and distance requirements for backfilling and

grading. The bottom line remains that the regulations at issue in this final rule have been inoperable since 1992, when OSM published notice that it was suspending the regulation. Any opposition to that suspension was required to be filed at that time—i.e., 34 years ago. While OSM agreed at that time that it would follow the notice and comment requirements for the Administrative Procedure Act (APA) for any future rulemakings to revise the time and distance requirements for backfilling and grading, OSM has not proposed any new regulations to replace the suspended provisions and is not doing so at this time. OSM is merely removing language that has no application, cannot be enforced, 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.

Further, OSM rejects the commenters' assertions that the language of 30 CFR 816.101 is necessary and lawful. As noted above, this provision has no applicability, making it unnecessary, and any attempt to enforce this provision would be rejected because the provision was suspended over 30 years ago, making any attempt to enforce the provision unlawful.

Finally, commenters contend that the topic of time and distance requirements for backfilling and grading is simply too controversial to be addressed by a direct final rule and that classifying the rule as "technical" does not insulate it from controversy that would require notice and comment rulemaking. In support of this position, one commenter attached documents alleging environmental harms related to surface coal mining operations for which reclamation was delayed for years after active coal extraction ended. OSM rejects the characterization of a direct final rule removing inoperative language as controversial merely because the inoperative language, if operative, would pertain to an issue of importance to the commenter. By that logic, no technical or housekeeping rule could ever be promulgated without notice and comment if

even one individual alleges that the large, more general topic itself is controversial. Further, the commenters' own inaction on this issue for the last thirty years undercut their arguments. In the three decades since this rule was suspended, commenters have not requested a rulemaking on this topic and, as recently as last year, when the Department sought comments on regulations that should be modified or repealed. Neither commenter suggested any revisions to this provision. 90 FR 21504 (May 20, 2025) (Docket DOI-2025-0005); *see also* 30 C.F.R. § 700.12.

As OSM made clear in the preamble to the rule, OSM had good cause under 5 U.S.C. 553(b)(B) to forgo notice-and-comment rulemaking because the rule is noncontroversial, only makes a technical update to remove a long suspended and inoperative rule, involves little agency discretion, and is unlikely to generate significant adverse comments. *See* 90 FR 54573. Moreover, even if OSM had no good cause to forgo notice-and-comment rulemaking, the direct final rule itself provided notice and an opportunity for comment and the commenters availed themselves of that opportunity. On that basis, the direct final rule complies with the APA.

For the reasons stated above, OSM determined that the two timely comments received on this rule were not significant adverse comments and there is no need to withdraw the direct final rule or provide any further notice and comment. As such, this notice confirms that this final rule will be effective on March 30, 2026.

**Lanny E. Erdos,**  
*Director,*  
*Office of Surface Mining*  
*Exercising the Authority of the Assistant Secretary – Land and Minerals Management.*