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	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-20 RESCINDED Transmittal Number: 390 Date: 10/28/87

Subject: Affected Area Calculations for Underground Mines

Approval: Ted D. Christensen **Title:** Director

PURPOSE. To clarify that, for all underground mine sites under the interim and permanent programs, the affected area includes the shadow area of an underground mine.

2. DEFINITIONS.

a. Affected area. As defined in 30 CFR 701.5 of the permanent program regulations, any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes ... the area located above underground workings....

b. Shadow area. For the purposes of this directive, the area located above underground workings.

3. POLICY/PROCEDURES.

a. Background. In the 1979 permanent program regulations that defined "affected area," OSMRE took the position that inclusion of the shadow area in determining the affected area was appropriate for both interim and permanent program sites. That part of the definition of affected area has remained unchanged in subsequent revisions of the regulations, and OSMRE continued to include shadow areas in affected area calculations of both interim and permanent sites. However, on July 16, 1984, the Interior Board of Land Appeals (IBLA), in S&M Coal v. OSMRE, stated that the shadow area could not be considered part of the affected area for interim program operations because the definition of affected area in 30 CFR 701.5 was a permanent program definition.

OSMRE has since determined that the IBLA's order in the S&M case has no binding or precedential effect on the agency, because the issue of the effective date of 30 CFR 701.5 was never briefed or argued before the IBLA and did not form the basis of any actual holding in the case.

b. Policy. All determinations of affected area for underground mine sites shall include the shadow area for both interim and permanent program sites.

c. Policy for Oversight of State Program. When evaluating a State's implementation of its approved regulatory program, OSMRE shall adhere to any requirements or policies contained within or adjunct to the approved program. The State program shall be considered no less effective than Federal requirements if the program provisions are applied in a manner consistent with the criteria outlined in section 3.b. of this Directive.

4. REPORTING REQUIREMENTS. None.

5. REFERENCES. Definition of affected area, 30 CFR 701.5 and 48 FR 14814, April 5, 1983.

6. EFFECT ON OTHER DOCUMENTS. This directive supersedes the instructions concerning the shadow area on interim program sites contained in the Memorandum of October 23, 1986, from Douglas E. Stone, Acting Supervisor, Virginia Two-Acre Task Force, to all Task Force Reclamation Specialists. This directive also supersedes the Memorandum of March 30, 1987, from Robert S. More, Assistant Solicitor, to Douglas E. Stone, Virginia Two-Acre Task Force Supervisor, on the subject "Inclusion of 'Shadow Area' in the Area Affected by an Underground Mining Operation."

7. CONTACT. Chief, Branch of Federal and Indian Programs, Division of Regulatory Programs; Telephone (202) 343-1864.