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	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-27-1 Transmittal Number: 780 Date: MAY 7 1993

Subject: WATER REPLACEMENT

Approval: [signature] **Title:** Acting DIRECTOR

The Energy Policy Act of 1992, enacted on October 24, 1992, established additional requirements in new Section 720 of the Surface Mining Control and Reclamation Act of 1977, concerning the prompt replacement of water supplies which have been adversely affected by underground coal mining operations. The Office of Surface Mining Reclamation and Enforcement (OSM) published a notice in the Federal Register on April 13, 1993 (58 FR 19215), advising the public that it will initiate rulemaking to address the requirements of Section 2504 of the Energy Policy Act of 1992. This notice also advised the public that all underground coal mining operations conducted after October 24, 1992, are required to replace certain identified water supplies which have been adversely affected by underground coal mining operations.

The provisions of Directive REG-27 are modified to incorporate the provisions of Section 2504 of the Energy Policy Act of 1992 and guidance set forth in the April 13, 1993, notice, a copy of which is included as an appendix.

Upon completion of rulemaking to address Section 2504 of the Energy Policy Act of 1992, OSM will revise Directive REG-27 "Water Replacement" to reflect the revised regulations.

Appendix: Notice of Intent Federal Register, April 13, 1993 (58 FR 19215)

CHANGE NOTICE

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701 and 817

Permanent Regulatory Program; Underground Mining Permit Application Requirements; Underground Mining Performance Standards

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

ACTION: Notice of intent.

SUMMARY: This Notice advises the public that the Office of Surface Mining Reclamation and Enforcement (OSM) will initiate rulemaking to address the requirements of Section 2504 of the Energy Policy Act of 1992. This notice also advises the public that all underground coal mining operations conducted after October 24, 1992, are required to comply with the subsidence related requirements to repair or compensate for material damage to dwellings as a result of subsidence due to underground coal mining operations and replace certain identified water supplies which have been adversely affected by underground coal mining operations.

FOR FURTHER INFORMATION CONTACT: Nancy R. Broderick, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208-3654.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776 (1992) (hereinafter, "the Energy Policy Act") was enacted October 24, 1992. Section 2504 of that Act, 106 Stat. 2776, 3104, amends the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA). As noted in the Congressional Record on this legislation, this section "provides for greater stability in the surface mining act program by settling controversies over subsidence protection." H.R. Rep. No. 474, 102d Cong., 2d Sess., pt. 8 at 86 (1992). The report also states that "at present, OSM's regulations do not protect coalfield citizens from the types of damages that can occur from land subsidence caused by underground coal mining, either in the form of compensation for, or repair of, damages to homes and other structures as well as replacement of adversely affected water supplies." *Id.*

Section 2504 of the Energy Policy Act requires that all underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. The Act requires repair of damage to include rehabilitation, restoration, or replacement of the structures identified by the Act, or compensation to the owner in the full amount of the diminution in value resulting from the subsidence. The Act requires prompt replacement of certain identified water supplies which have been adversely affected by underground coal mining operations. The Secretary of the Interior is required to promulgate final regulations to implement the provisions of the Act by October 24, 1993. Operators both in primacy States and in Federal program States, as well as on Indian lands, are required to comply with this provision of the Energy Policy Act for their operations conducted after October 24, 1992.

OSM believes that the language of the Energy Policy Act will require retroactive enforcement for violations

occurring after October 24, 1992. That is, once the Energy Policy Act becomes directly enforceable in a State, material damage that has occurred from underground coal mining operations conducted after October 24, 1992, and which has not been repaired, replaced or compensated for will be subject to these provisions even if the damage occurs before the Energy Policy Act became directly enforceable in that State. OSM will solicit comment on this issue in its forthcoming rulemaking.

The regulatory authorities are encouraged to conduct investigations of any complaints alleging violations of the nature covered under the Energy Policy Act provisions. This will ensure that circumstances at a site of alleged violations are observed and documented contemporaneously, and are available for later enforcement action, if necessary. OSM will conduct investigations of complaints reported to OSM if the State regulatory authority chooses not to conduct an investigation. OSM or the State regulatory authority will ensure that complaints are documented and a record of alleged violations is maintained.

OSM intends to publish final regulations within one year from the date of enactment in accordance with the requirements of the Energy Policy Act.

Dated: April 7, 1993.

W. Hord Tipton,

Acting Director.

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