The Director agrees, in part, with the comments presented above. As explained in the Director's Decision below, the Director notes that OSM will directly enforce those provisions of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) for which the State does not have comparable provisions and/or the authority to enforce. Specifically, for those underground mining activities conducted between October 24, 1992, and August 21, 1994. The State will enforce its provisions for which it has authority. Specifically, for those complaints relating to water loss or subsidence that are the subject of this decision, the Director may need to amend its program. As discussed above, by letter dated May 1, 1995, Pennsylvania intends to utilize the State program amendment process to make its program no less effective than the Federal regulations. The Director finds the 732 State program amendment process adequate to address potential deficiencies in the State program. Pennsylvania has jurisdictional over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 program amendment process, the Director will notify Pennsylvania of required changes to its program.

The party's last comment concerns the permitting process. It recommends that pending submission of a State program amendment, if Pennsylvania does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Pennsylvania has jurisdiction over the regulation of its surface coal mining operations. The Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Pennsylvania will be accomplished through joint State and OSM enforcement—option #4. Pennsylvania has statutory and regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2). The State's authority to enforce its provisions applies to operations conducted after August 21, 1994, and it would enforce its provisions for these operations. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992.

If circumstances within Pennsylvania change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by Federal Register notice. Dated: July 24, 1995.

Allen D. Klein,
Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18582 Filed 7–27–95; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 946
Virginia Regulatory Program

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

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Virginia. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992; Promptly repair or compensate for subsidence caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Virginia and consideration of public comments, OSM has decided that initial enforcement in Virginia will be accomplished through State enforcement.


FOR FURTHER INFORMATION CONTACT: Douglas E. Stone, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4030.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations. These provisions requiring prompt repair or compensation for damage to structures, and prompt placement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.
B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards at 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.112(c)(2) required in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining.

* * *

The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, Federal Register (60 FR 17743) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) State program amendment. If the State's promulgation of regulatory provisions that are counterparts to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and strong underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been through and complete so as to assure prompt remedial action, then OSM will provide any to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions that correspond to the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) as included in the State program at Sections 45.1±243 and 45.1±258 of the Code of Virginia are adequate State counterparts to section 720(a) of SMCRA.

(2) State enforcement. If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement is statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) Interim direct OSM enforcement. If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in its entirety 30 CFR 817.41(j) and 817.121(c)(2) for underground mining activities conducted in the State after October 24, 1992.

(4) State and OSM enforcement. If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but instead to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation under without first sending a ten-day notice provisions of 30 CFR 843.25.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of “drinking, domestic or residential water supply,” “material damage,” “non-commercial building,” “occupied dwelling and structures related thereto,” and “replacement of water supply” that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Virginia

Virginia program activity, requirements, and enforcement. By letter to Virginia dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Virginia (Administrative Record No. VA±850). By letter dated January 13, 1995, Virginia responded to this request (Administrative Record No. VA±851).

Virginia indicated that existing State program provisions at Sections 45.1±243 and 45.1±258 of the Code of Virginia are adequate State counterparts to section 720(a) of SMCRA. Virginia explained that it will enforce these State program provisions effective October 24, 1992. Virginia also provided a copy of DMLR memorandum 6±93 concerning intermediate guidelines for implementing the Virginia law until implementing Virginia regulations are approved. Section 480-03-19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations concerning subsidence control has been used by Virginia since December 26, 1990.

OSM records show that approximately 325 underground coal mines have been classified as active in Virginia since October 24, 1992. Between October 24, 1992, and January 13, 1995, Virginia investigated 262 citizen complaints alleging subsidence-induced structural damage or water supply loss or contamination as a result
of underground mining operations. As of January 13, 1995, Virginia found that a violation of the Act existed on 35 of the complaints, no violation of the Act existed on 202 of the complaints, and technical reports and a final decision were pending on 25 complaints.

On May 10, 1995 (Administrative Record Number VA–856), OSM met with the Virginia Division of Mine Land Reclamation (DMLR) to discuss implementation issues relative to the Surface Mining Reclamation Act of 1977. At that meeting, OSM agreed with DMLR concerning the following interpretation of the Virginia program:

- Virginia has full statutory authority at section 43.1–258 of the Code of Virginia to require the replacement of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992.

- Virginia has full authority at section 480–03–19.817.121(C)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

OSM published in the Federal Register (60 FR 17743) an opportunity for a public hearing and a request for public comments to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Virginia. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM’s responses to them.

One commenter (Administrative Record Numbers VA–861 and VA–862) asserted that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCR and are not consistent with Congress’ intent in creating section 720 of SMCR. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. A second commenter adopted these comments by reference. OSM does not agree with the commenter’s assertions, and it addresses similar comments in the March 31, 1995, Federal Register (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are most issues for Virginia because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another commenter stated that the Virginia program currently has adequate counterpart provisions in place and has proper authority to implement the requirements of the Energy Policy Act of 1992 in Virginia (Administrative Record Number VA–860). The party also stated that Virginia’s investigations of subsidence-related complaints have been designed to ensure prompt remedial action. These investigations, the commenter asserted, have been deemed fair by both the mining industry and the affected public. The commenter concluded that initial enforcement of the requirements of the Energy Policy Act of 1992 in Virginia is already being accomplished by the Virginia program.

One commenter requested “interim direct OSM enforcement” (Administrative Record Number VA–857). The commenter asserted that even though Virginia has statutory and regulatory provisions in place that are counterparts to the Energy Policy Act of 1992, Virginia provides inadequate protection for citizens residing in the coalfields. The commenter asserted that Virginia fails to attribute subsidence and water loss damages of any extent to underground coal mining operations. The commenter asserted that subsidence damages to the hydrologic regime and personal property (homes, ponds, outbuildings, etc.) are each looked at by the State as an isolated event rather than tied together to show the wide expanse of subsidence damage in Virginia. On March 10, 1995, this same commenter requested that OSM conduct a review of the Virginia program to verify similar allegations. That review is currently being conducted by OSM and it will address the commenter’s allegations concerning the Virginia program.

Director’s decision. Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Virginia will be accomplished through State enforcement. The Director has made this decision after soliciting public comment and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Virginia by letters dated January 13, 1995, and May 26, 1995, and in discussions held with Virginia on May 4, 1995. The Director has concluded that under Code of Virginia section 41.1–258, the State has full authority to require the replacement of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992. In addition, Virginia has full authority at section 480–03–19.817.121(C)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and dwellings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

If circumstances within Virginia change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by Federal Register notice.

Dated: July 24, 1995.

Allen D. Klein,
Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18583 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Regulatory Program

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

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in West Virginia. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with West Virginia and consideration of public comments, OSM has decided that initial enforcement in West Virginia will be accomplished through State enforcement.


FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301–2816, Telephone: (304) 347–7158.