By letter dated May 4, 1995 (Administrative Record No. PA–835.11), Pennsylvania expressed its intention to implement as much of the Federal regulations as possible, to the extent of its law. It agreed to investigate all subsidence-related complaints and take remedial action and will defer to OSM in those situations where the Federal rules provide greater relief for the complainant. Program changes will be made, as necessary, through the program amendment process.

Comments. On April 10, 1995, OSM published in the **Federal Register** (60 FR 18046) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Pennsylvania. The comment period closed on May 10, 1995. Because Pennsylvania 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. Although 12 commenters responded, only 4 specifically addressed the implementation options as requested in the **Federal Register** Notice. The others addressed general provisions of Pennsylvania's regulatory program or Pennsylvania Act 54 implementation or wrote to endorse the position of the industry organization who responded on May 5, 1995.

A mining organization responded on May 12, 1995 (Administrative Record No. PA–835.16). The party stated 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 SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25 which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regularly programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

A second industry organization responded on May 5, 1995 (Administrative Record No. PA–835.13). The party recommended that OSM pursue enforcement through the State program amendment process. The Director does not agree for the following reasons: (a) although Pennsylvania's regulatory program provides similar protections to those afforded by 30 CFR 817.41(j) and 817.121(c)(2), it does not have comparable provisions to all of the Federal requirements and Pennsylvania will require one year or more to make the necessary changes through the amendment process, (b) the number of underground coal operations is not low, and (c) the number of complaints pertaining to section 720 of SMCRA is now low. The Director also notes that the party states that ''for all practical purposes, the Pennsylvania program is already as effective as section 720 and OSM's implementing regulations.'' However, Pennsylvania has itself acknowledged that it Act 54 lacks water replacement and subsidence provisions contained in SMCRA and the accompanying Federal regulations (60 FR 18048). The party also contends that complaints or reports of violations do not indicate a chronic or pervasive problem requiring direct Federal enforcement or interim enforcement and concludes that the State program amendment process is the best enforcement option for Pennsylvania. The Director notes that although the State performed initial investigations of 32 water supply and structural damage complaints, the absence of additional program provisions prevented additional State action to ensure compliance with all provisions of the Federal regulations. For the reasons specified in the Director's Decision below, the Director has decided that enforcement in Pennsylvania will be best accomplished through joint OSM and State enforcement. As noted above, however, the State will investigate all subsidence related complaints and take remedial action. The State will only refer to OSM in those situations where the Federal provisions provide greater relief for the complainant.

A citizens' group responded on May 8, 1995 (Administrative Record No. PA–835.03). The party's comments were divided into two sections: (1) changes it believes are necessary to make the Pennsylvania program as effective as the Federal rules, and (2) interim enforcement. The Director notes that the comments presented in the first section pertain to alleged deficiencies in Pennsylvania Act 54. The majority of the comments in section two pertains more directly to the implementation options presented in the **Federal Register** Notice. The party states that Pennsylvania cannot qualify for options one or two. It believes OSM has a responsibility to see that all complaints in the ''gap'' period are investigated. The party also commented that full compensation be made to homeowners by the permittee regardless of any prior agreements between homeowners and operators. The party recommended that when OSM begins direct enforcement, it should handle all cases of water loss and subsidence damage dealing with occupied dwellings and structures. Pennsylvania should handle those provisions not addressed by the Federal