

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–24–07 Pacific Aerospace Corporation Ltd.: Amendment 39–14387; Docket No. FAA–2005–21935; Directorate Identifier 2005–CE–37–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 29, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model 750XL, serial numbers 101 through 115, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of incorrect sizing of the attachment lug spacers causing the lugs to distort when the attachment bolt is tightened. Also, outer wing attachment lugs were used to secure the spar in the wing build jig without spacers. This may have bent the clevis legs outward. These two problems may cause cracking and/or degradation of

fatigue life. The actions specified in this AD are intended to prevent structural failure of the outer panel and spar due to a cracked, bent, or distorted condition of the left and right outer panel attachment lugs; and incorrect spacing of the left and right outer panel attachment lugs. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the left and right outer panel, paired center wing lugs, and the outer panel single lugs for damage (scoring or gouging).	Upon accumulating 300 hours time-in-service (TIS) or within 50 hours TIS after December 29, 2005 (the effective date of this AD), whichever occurs later.	Follow Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.
(2) Inspect the left and right outer panel, paired center wing lugs, and the outer panel single lugs for cracks. You must use a fluorescent penetrant inspection procedure instead of the dye penetrant inspection procedure stated in the service information.	Upon accumulating 300 hours TIS or within 50 hours TIS after December 29, 2005 (the effective date of this AD), whichever occurs later.	Follow Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.
(3) If any damage and/or cracks are found during the inspections required in paragraph (e)(1) and (e)(2) of this AD, you must replace the lugs.	Prior to further flight, after any inspection where damage and/or cracks are found.	Follow Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.
(4) Inspect the left and right wing paired lugs for parallel spacing within 0.010 inches. If the paired lugs are not parallel within 0.010 inches, reshim outer wing attachment points and correct spacing.	Inspect upon accumulating 300 hours TIS or within 50 hours TIS after December 29, 2005 (the effective date of this AD), whichever occurs later. Correct spacing and reshim prior to further flight after the inspection.	Follow Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) CAA Airworthiness Directive DCA/750XL/5, dated April 28, 2005; and Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005 also address the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005. The Director of the Federal Register approved the incorporation

by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Pacific Aerospace Corporation Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: (64) 7–843–6144; facsimile: (64) 7–843–6134. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA–2005–21935; Directorate Identifier 2005–CE–37–AD.

Issued in Kansas City, Missouri, on November 17, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[SATS No. AK–006–FOR]

Alaska Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Alaska regulatory program (the “Alaska program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alaska proposed revisions to and additions of rules about the description of geology; probable hydrologic consequences; application requirements for underground mining; requirements for a subsidence control plan; bonding; replacement of water supplies; design requirements for other treatment facilities; design requirements for impoundments; discharges into underground mines; performance

standards for disposal of excess spoil or coal mine waste; inspections of excess spoil, underground development waste, or coal processing waste disposal areas; performance standards for mining operations that have thin or thick overburden; sealing requirements for auger holes; as-built plans of underground workings; damage to protected structures caused by subsidence from underground mining; inspections of abandoned sites; administrative procedures and provisions for civil penalties; definitions and provisions governing coal extraction incidental to the extraction of other minerals; exemption from provisions governing coal exploration and surface coal mining and reclamation operations for removal of coal incidental to the extraction of other minerals if the coal is 16 $\frac{2}{3}$ percent or less of the total tonnage of minerals removed; definitions; prime farmlands; western alkaline mine initiative; designs, inspections, and certifications by registered professional engineers or other qualified professional specialist experienced or trained in the construction of impoundments and primary roads; coal exploration; reference to "Standard Methods for the Examination of Water and Wastewater"; requirements concerning topsoil; requirements for surface and ground water monitoring; placement of coal mine waste disposal in excess spoil fills; policy statements; small operator assistance program; blasting; cumulative hydrologic impact assessment; fish and wildlife and the protection and enhancement plan; design and construction requirements for the temporary and permanent diversion of miscellaneous flows; design and construction requirements for both temporary and permanent stream channel diversions; the design and construction requirements for the spillways; drainage control for valley fills and coal waste dams and embankments; petitions for designating lands unsuitable for mining; and roads and low-water crossings.

Alaska revised its program to be consistent with the corresponding Federal regulations, clarify ambiguities and improve operational efficiency.

DATES: *Effective:* November 29, 2005.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844-1400 ext. 1424, E-mail address: JFULTON@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program
 II. Submission of the Proposed Amendment
 III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings

IV. Summary and Disposition of Comments
 V. OSM's Decision
 VI. Procedural Determinations

I. Background on the Alaska Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alaska program on March 23, 1983. You can find background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval in the March 23, 1983, **Federal Register** (48 FR 12274). You can also find later actions concerning Alaska's program and program amendments at 30 CFR 902.10, 902.15 and 902.16.

II. Submission of the Proposed Amendment

By letter dated May 11, 2004, Alaska sent us a proposed amendment to its program (State Amendment Tracking System (SATS) No. AK-006, administrative record No. AK-9) under SMCRA (30 U.S.C. 1201 *et seq.*). Alaska sent the amendment in response to portions of letters dated May 7, 1986; December 16, 1988; November 1, 1989; February 7, 1990; June 4, 1996; and June 19, 1997 (administrative record Nos. AK-01, AK-03, AK-05, AK-06, AK-07 and AK-09); that we sent to Alaska in accordance with 30 CFR 732.17(c). Alaska also submitted the amendment in response to required program amendments codified at 30 CFR 902.16(a) and (b). Alaska submitted one provision at its own initiative.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42920), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. AK-9-c). Because no one requested a public hearing or meeting, none was held. The public comment period ended on August 18, 2004. We received comments from one Federal agency.

During our review of the amendment, we identified concerns about revegetation of areas with a fish and

wildlife habitat, recreation, shelter belts, or forest products post mining land use; subsidence and water replacement; bond release applications; topsoil removal; the removal of siltation structures; impoundment design; coal mine waste; and mining of coal incidental to the extraction of other minerals if coal is 16 $\frac{2}{3}$ percent or less of the total tonnage of minerals removed. We notified Alaska of our concerns by letter dated October 4, 2004 (administrative record No. AK-9-3).

Alaska responded in a letter dated April 1, 2005, by submitting a revised amendment (administrative record No. AK-9-4).

Based upon Alaska's revisions to its amendment, we reopened the public comment period in the June 23, 2005, **Federal Register** (70 FR 36360; administrative record No. AK-9-4b). The public comment period ended on July 25, 2005. We received comments from one Federal agency and one local agency.

By letter dated July 20, 2005 (administrative record No. AK-9-5), Alaska submitted editorial clarification concerning proposed rules 11 AAC 90.461(g), 11 AAC 90.650 and 11 AAC 90.331(e). Alaska explained that because there were two proposed rules codified as 11 AAC 90.461(g), the proposed rule, concerning the consideration of all relevant and reasonably available information in any determination whether damage to protected structures was caused by subsidence, originally codified as 11 AAC 90.461(g), will be codified as 90.461(i). Alaska explained that the proposed rules at 11 AAC 90.650 through 11 AAC 658, concerning exemption for coal extraction incidental to the extraction of other minerals, were proposed as new Article 13 in the Alaska program and that the existing Article 13 and all following articles would be recodified beginning as Article 14. Alaska explained that an editorial revision of 11 AAC 90.331(e), concerning removal of siltation structures, was made to clarify that if there are areas approved by the Commissioner of the Alaska program and the U.S. Environmental Protection Agency for use of best management practices as alternative sediment control measures where siltation structures already exist, the existing siltation structures could be removed. Alaska proposed to revise the wording of "before the Commissioner's approval under 11 AAC 90.323(b)" to read "until after alternative sediment control measures have been approved under 11 AAC 90.323(b)".

Because Alaska's proposed editorial revisions and explanations did not

change the meaning of any proposed rules, OSM did not reopen the comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Revisions to Alaska's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Alaska proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations. 11 AAC 90.045(b), (c), (d), and (e) (30 CFR 780.22(b) and (c) and 784.22(b)), concerning the requirements for (1) borings, or core samples from a proposed permit area; (2) test borings or core samplings collected and analyzed to greater depths within the proposed permit area or, for the area outside the proposed permit area, an evaluation of the impact of the proposed activities on the hydrologic balance; and (3) an application for an underground mine to include a separate description of the geology of the area proposed to be affected by surface operations and facilities, surface land overlying coal to be mined, and the coal to be mined;

11 AAC 90.085(a)(5) (30 CFR 784.14(e)(3)(iv)), concerning the requirement for a finding, in the discussion of probable hydrologic consequences, stating whether underground activities may result in contamination, diminution, or interruption of a well or spring in use for domestic, drinking, or residential purposes;

11 AAC 90.101(a) and (b) (30 CFR 784.20), concerning application requirements for underground mining and requirements for a subsidence control plan;

11 AAC 90.201(d) and (f) (30 CFR 800.11(b)(4) and 800.4(g)), concerning requirements for (1) incremental bonding and (2) adequate bond coverage to be in effect at all times;

11 AAC 90.211(a) (30 CFR 800.40(a)(3)), concerning addition of the requirement for a notarized statement in bond release applications affirming that all applicable reclamation requirements have been met;

11 AAC 90.321(e) (30 CFR 817.41(j)), concerning the requirement for prompt replacement of water supplies damaged by underground mining activities conducted after October 24, 1992;

11 AAC 90.331(h) (30 CFR 816.46(d)), concerning design requirements for other treatment facilities;

11 AAC 90.336(g) (30 CFR 816.49(a)(1)), concerning the requirement that impoundments meeting the Class B or C criteria in the U.S. Department of Agriculture, Natural Resources Conservation Service, Technical Release No. 60 (TR-60), "Earth Dams and Reservoirs", comply with the table titled "Minimum Emergency Spillway Hydrologic Criteria" in TR-60;

11 AAC 90.349(l) (30 CFR 816.41(i)(1)(i)), concerning discharges into underground mines;

11 AAC 90.391(b) and (l), 90.395(a) and 90.401(a), (d), and (e) (30 CFR 816.81(a) and (c)(1), 816.83, and 816.83(c)(3) and (4)), concerning performance standards for disposal of excess spoil or coal mine waste;

11 AAC 90.397(a) (30 CFR 816.83(d)), concerning inspections of excess spoil, underground development waste, or coal processing waste disposal areas;

11 AAC 90.407(f) (30 CFR 816.84(f)), concerning the requirement that at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event from impounding structures constructed of or impounding coal mine waste;

11 AAC 90.443(a), (i), and (m) (30 CFR 816.104(b) and 816.105(b)), concerning performance standards for mining operations that have thin or thick overburden;

11 AAC 90.447(c)(1) (30 CFR 819.15(b)(1)), concerning the sealing requirements for auger holes;

11 AAC 90.461(b) (30 CFR 817.121(a)), concerning applications for underground mining, and requirements to either (1) prevent subsidence from causing material damage, or (2) plan for subsidence in a predictable and controlled manner that will minimize material damage;

11 AAC 90.461(g) (30 CFR 817.121(g)), concerning the requirement to, within an approved schedule, submit as-built plans of underground workings and requirements for the content of the plans;

11 AAC 90.461(h) (30 CFR 817.121(c)(5)), concerning requirements for an additional bond amount, when (1) subsidence-related material damage occurs to protected land, structures or facilities, or (2) contamination, diminution, or interruption occurs to a protected water supply;

11 AAC 90.461(i) (30 CFR 817.121(c)(4)(v)), concerning the requirement for the Commissioner of the Alaska program to consider all relevant

and reasonably available information in any determination whether damage to protected structures was caused by subsidence from underground mining;

11 AAC 90.601(h) and (i) (30 CFR 840.11(g) and (h)), concerning inspections of abandoned sites;

11 AAC 90.629(a) and 90.631(a) (30 CFR 845.18(a) and 845.19(a)), concerning the administrative procedures for civil penalties;

11 AAC 90.635(a) and (b), 90.637(a) and (b), 90.639(a) through (c), and 90.641(a) through (d) (30 CFR Part 846), concerning provisions governing individual civil penalties;

11 AAC 90.650 through 90.658 (30 CFR Part 702), concerning definitions and provisions governing coal extraction incidental to the extraction of other minerals;

11 AAC 90.901(a)(2) (30 CFR 702.11(a)), concerning the exemption from provisions governing coal exploration and surface coal mining and reclamation operations, for coal incidental to the extraction of other minerals if the coal is 16 $\frac{2}{3}$ percent or less of the total tonnage of minerals removed;

11 AAC 90.911 (30 CFR 701.5), concerning addition of definitions for "coal mine waste," "drinking, domestic, or residential water supply," "impounding structure," "material damage," "noncommercial building," "occupied residential dwelling and structures related thereto," "previously mined area," "refuse piles," and "replacement water supply;"

11 AAC 90.911 (30 CFR 761.5), concerning addition of a definition for "community or institutional building;"

11 AAC 90.911 (30 CFR 795.3), concerning addition of a definition for "qualified laboratory;"

11 AAC 90.911 (30 CFR 800.5), concerning removal of reference to personal property from the definition for collateral bond; and

11 AAC 90.911 (30 CFR 816.104(a) and 816.105(a)), concerning addition of definitions for "thick overburden" and "thin overburden."

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

B. Revisions to Alaska's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Prime Farmlands

Alaska has no counterpart rules to the Federal regulations at 30 CFR 785.17 concerning provisions unique to prime

farmlands. The Director of OSM (Director) required in a letter dated June 19, 1997, sent in accordance with 30 CFR 732.17(c), that Alaska revise its program to include provisions no less effective than the Federal regulations at 30 CFR 785.17 protecting prime farmland soils.

Alaska's existing rule at 11 AAC 90.157 states that the Commissioner of the Alaska program may impose additional requirements for permit application contents, soil removal and handling, use of nutrients and amendments, erosion control, revegetation, and postmining land use to encourage development of agriculture and to assure that important farmlands are returned to premining or higher levels of productivity.

Alaska submitted correspondence, sent by e-mail to Alaska on July 10, 2002, from the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), Alaska office. NRCS explained that one of the criteria for prime farmlands in the National Soils Handbook is that the soil temperature regime must be warmer than cryic. NRCS stated that all soils in Alaska have cryic soil temperature regimes which explains why there are no prime farmland soils in Alaska.

Based on the NRCS correspondence documenting that there are no prime farmland soils in Alaska, the Director finds that no further revision of the Alaska program is necessary to protect prime farmland soils.

2. 11 AAC 90.323(a), (b), and (c) and 90.331(e), Western Alkaline Mine Initiative

Alaska, at its own initiative, proposed to revise 11 AAC 90.323(a), concerning water quality standards, to refer to an exception at 11 AAC 90.323(b) from the requirement that any discharge of water from the disturbed area, including any disturbed area that has been graded, seeded, or planted, must pass through one or more siltation structures before leaving the permit area until removal is approved by the Commissioner of the Alaska program under 11 AAC 90.331(e).

Alaska proposed to revise 11 AAC 90.323(b) to state that the Commissioner may allow other sediment control measures for primary sediment control for disturbed areas that have been regraded, respread with topsoil, and stabilized against erosion, if the Commissioner and the U.S. Environmental Protection Agency (EPA) have approved the use of best management practices (BMP) as the effluent limitation.

Alaska proposed to revise 11 AAC 90.323(c) to require that the operator shall meet all applicable Federal and State water quality laws and regulations for the drainage from the permit area when there is mixing of drainage from disturbed, reclaimed, and undisturbed areas.

Alaska proposed to revise 11 AAC 90.331(e), to state that a siltation structure may not be removed until after the disturbed area has been stabilized and revegetated and no earlier than two years after the last augmented seeding or until after alternative sediment control measures have been approved under 11 AAC 90.323(b).

OSM suspended the Federal counterpart to Alaska's proposed 11 AAC 90.323(a) at 30 CFR 816.46(b)(2) on November 20, 1986 (see finding no. 16 at 51 FR 41957), in response to a remand by the court in *Permanent Surface Mining Regulation Litigation II*. The remaining Federal rules governing water quality for discharges from disturbed areas are those found at 30 CFR 816.42, 816.45, and 816.46(b)(1). In relevant part, those regulations require that sediment be controlled using the best technology currently available (BTCA). OSM no longer defines BTCA as being siltation structures as we previously did in the now-suspended 30 CFR 816.46(b)(2).

Alaska's proposed new language at 11 AAC 90.323(b) requires the approval of both the Commissioner of the Alaska program and EPA before Alaska could approve the use of BMP as an effluent limitation on reclamation areas.

EPA, on January 23, 2002, published a final rule that establishes effluent limitations and performance standards for the Western Alkaline Coal Mining Subcategory applicable to alkaline mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas at western coal mining operations (see 67 FR 3370). In this final rule, EPA defined (1) "Western coal mining operation" as a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less, and (2) "Alkaline mine drainage" as "mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/L" (see 67 FR 3370 at 3375).

There are regions in Alaska where coal is mined that meet these climatic conditions.

In the final rule, EPA requires that a western coal mine operator develop and

implement a site-specific sediment control plan for applicable areas (see January 23, 2002, 67 FR 3370 at 3380). The sediment control plan must identify sediment control BMPs and present their design, construction, maintenance specifications, and their expected effectiveness. EPA requires the operator to demonstrate, using watershed models accepted by the permitting authority, that implementation of the selected BMPs will not increase sediment loads over pre-mined, undisturbed condition sediment levels. The permit must then incorporate the site-specific sediment control plan and require the operator to implement the plan. EPA explains that sediment control BMPs for the coal mining industry are well known and established and include regrading, revegetation, mulching, check dams, vegetated channels, straw bales, dikes, silt fences, small sumps and berms, contour terracing, sedimentation ponds, and other construction practices (e.g., grass filters, serpentines, leaking berms, etc.). In order to maintain pre-mined, undisturbed conditions on reclamation and associated areas, EPA promulgated non-numeric effluent limits based on the design, implementation, and maintenance of these BMPs.

As clearly stated in Alaska's proposed revision, EPA would have to approve any proposed BMPs before implementation of reclamation plans without sedimentation ponds or before removal of sedimentation ponds that treat reclamation areas. The Director finds that Alaska's proposed revision at 11 AAC 90.323(b) is consistent with EPA's new rule described above that allows for the installation of BMPs as the standard for treating runoff from reclaimed lands in the western United States that meet certain climatic conditions.

Although OSM has no direct counterpart to proposed 11 AAC 90.323(c), this requirement is implicit in OSM's regulations. Any mixing of runoff from undisturbed lands or reclaimed lands with runoff from disturbed lands would have to be treated in accordance with the Federal regulations at 30 CFR 816.42, 816.45, and 816.46. Both Alaska's proposed rule and OSM's existing regulations require, as do EPA's rules, that any waste stream that is commingled with a waste stream subject to a subpart of 40 CFR part 434 will be required to meet the most stringent limitations applicable to any component of the combined waste stream (see January 23, 2002, 67 FR 3370 at 3375).

Alaska's proposed rule at 11 AAC 90.331(e) contains requirements that are substantively the same as those in the

Federal regulations at 30 CFR 816.45(a)(2) and 816.46(a)(5) with the exception that Alaska's proposed rule allows for the removal of siltation structures after approval of alternative sediment control measures as BMPs by the Commissioner and EPA. OSM agrees that the allowance for the removal of existing siltation structures including sedimentation ponds after the required approvals of BMPs as alternative sediment control measures for the same area is inherent in the proposed language at 11 AAC 90.323(a) and (b); Alaska's proposed 11 AAC 90.331(e) makes this rationale explicit.

Based on the discussion above, the Director finds that Alaska's proposed revisions at 11 AAC 90.323(a), 90.323(b), 90.323(c), and 90.331(e) are no less effective than and consistent with the counterpart Federal regulations at 30 CFR 816.42, 816.45, and 816.46(b)(1) and approves them.

OSM notes that our approval of 11 AAC 90.323(b) should not be construed as approving the use of BMP as an effluent limitation because only the EPA has the authority to make that determination as the language of Alaska's proposed rule itself acknowledges.

3. 11 AAC 90.089(a)(1), 90.336(a), 90.337(a), 90.491(f)(1), Designs, Inspections, and Certifications by Registered Professional Engineers or Other Qualified Professional Specialist Experienced or Trained in the Construction of Impoundments and Primary Roads

Alaska proposed to revise 11 AAC 90.089(a)(1) and 90.336(a), concerning preparation and certification of design plans for siltation structures, impoundments, and coal mine waste dams, and 11 AAC 90.491(f)(1), concerning preparation and certification of design plans for primary roads to require that the plans must be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience or training in the design and construction of impoundments and roads.

Alaska also proposed to revise 11 AAC 90.337(a) to require that each permanent or temporary impoundment must be inspected by, or under the supervision of, a registered professional engineer or other qualified professional specialist under the direction of a professional engineer, and that the professional engineer or specialist shall be experienced or trained in the construction of impoundments.

These proposed rules are, with one exception, the same as the counterpart

Federal regulations at 30 CFR 780.37(b), 816.49(a) and 816.49(a)(11) concerning preparation and certification of plans and drawings for primary roads, siltation structures, impoundments, and coal mine waste dams, and inspections of impoundments. The exception is that Alaska's proposed rules allow for preparation and certification or inspection by registered professional engineers with experience or training, while the Federal regulations only allow for preparation and certification of plans or inspection by registered professional engineers with experience. Alaska explained that the allowance for a registered professional engineer who is trained in the construction of impoundments and roads is necessary because of the limited pool in Alaska of such engineers who are experienced in the construction of impoundments or roads and inspections of impoundments.

As noted above, the Federal regulations specify that certain design and construction certifications and inspections must be made by a qualified, registered, professional engineer or qualified, registered, professional land surveyor who is experienced in the design and construction or inspection of these facilities. The term "experienced" was introduced in the Federal regulations that were promulgated during 1983 and 1987. The term is not defined and there is no explanation of it in the preambles to the proposed or final **Federal Register** notices for the promulgated Federal regulations. OSM agrees with Alaska that professional registered engineers who are trained, but who may not yet have worked in the field, can suffice for these certification and inspection responsibilities. OSM acknowledges that, in addition to the lack of experienced professional registered engineers in Alaska (in comparison to other States), mining in Alaska occurs in remote areas where it is not a simple matter to bring in a registered professional engineer as a consultant who may have such experience.

Therefore, based on the above discussion, the Director finds that Alaska's proposed rules at 11 AAC 90.089(a)(1), 90.336(a), 90.337(a), 90.491(f)(1) are no less effective than the counterpart Federal regulations at 30 CFR 780.37(b), 816.49(a) and 816.49(a)(11), and approves them.

C. Revisions to Alaska's Rules or Other Explanations Submitted in Response to Required Amendments Codified at 30 CFR 902.16(a) and (b) (See, Respectively, 57 FR 37410, August 19, 1992, Administrative Record No. AK-C-31; and 61 FR 48835, September 17, 1996, Administrative Record No. AK-E-22)

1. 30 CFR 902.16(a)(2), Description of Geology at 11 AAC 90.045(a)

OSM required at 30 CFR 902.16(a)(2) that Alaska revise 11 AAC 90.045(a) to require a description of the geology within the permit and adjacent areas to include the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining (finding no. 4, 57 FR 37410 at 37413, August 19, 1992).

Alaska proposed to revise 11 AAC 90.045(a) by adding a requirement that is substantively the same as the requirement in the Federal regulations at 30 CFR 780.22(b)(1) and 784.14(i)(2)(i).

Therefore, the Director finds that proposed 11 AAC 90.045(a) is no less effective than the Federal regulations at 30 CFR 780.22(b)(1) and 784.14(i)(2)(i), approves proposed 11 AAC 90.045(a) and removes the required amendment at 30 CFR 902.16(a)(2).

2. 30 CFR 902.16(a)(3), Coal Exploration at 11 AAC 90.163(b)(1)

OSM required at 30 CFR 902.16(a)(3) that Alaska revise 11 AAC 90.163(b)(1) to require that an operator affirm that a surface coal mining permit application will be submitted in the near future as required at 30 CFR 772.14(b); and to require that provisions in an exploration application provide evidence that sufficient coal reserves are available for future use or sale; and that an application for an exploration permit to remove more than 250 tons of coal contain a statement of why extraction of more than that amount is necessary per the requirements of Federal regulations at 30 CFR 772.14(b)(3) and (4) (finding no. 5, 57 FR 37410 at 37413, August 19, 1992).

In response to the required amendment, Alaska explained and OSM confirmed that existing rules at 11 AAC 90.163(b)(1), (c)(5) and (c)(6) contained the same requirements as those in the Federal regulations at 30 CFR 772.14(b), (b)(3) and (b)(4). On September 17, 1996, OSM approved, among other provisions concerning coal exploration, revisions to Alaska's program at 11 AAC 90.163(b)(1), (c)(4) and (c)(5) as substantively the same as the

counterpart Federal regulations at 30 CFR 772.14(b), (b)(3) and (b)(4) (see finding nos. 2 and 5, 61 FR 48835 at 48836 and 48837). OSM failed to remove the required amendment when these Alaska rules were approved. Other than the revision in codification from 11 AAC 90.163(c)(4) and (c)(5) to 11 AAC 90.163(c)(5) and (c)(6), these Alaska rules are the same as those approved by OSM on September 17, 1996.

Therefore, the Director is, based on our September 17, 1996, approval, removing the required program amendment at 30 CFR 902.16(a)(3).

3. 30 CFR 902.16(a)(4), Reference to Standard Methods for the Examination of Water and Wastewater at 11 AAC 90.043(b)

OSM required at 30 CFR 902.16(a)(4) that Alaska revise 11 AAC 90.181(a)(5), .043, .047 and .089 to include reference to the 17th edition of the Standard Methods for the Examination of Water and Wastewater (finding no. 6, 57 FR 37410 at 37413, August 19, 1992).

Alaska proposed to revise 11 AAC 90.043(b) to specify that any water quality analyses required by 11 AAC 90.043, 90.047 or 90.049 must be conducted according to the methodology in the most current edition of the Standard Methods for the Examination of Water and Wastewater, or the methodology in 40 CFR parts 136 and 434.

Alaska's existing rule at 11 AAC 90.181(a)(6), concerning qualified laboratories, requires, in part, that the laboratory have the capability of collecting field samples, and making hydrologic field measurements and analytical laboratory determinations in accordance with 11 AAC 90.043, which has been revised as described above to require analyses conducted according to the methodology in Standard Methods for the Examination of Water and Wastewater. Therefore, OSM is no longer requiring revision of 11 AAC 90.181(a)(5).

Alaska's rule language at proposed 11 AAC 90.043(b) differs from the Federal language only in that Alaska refers to the most recent edition rather than the 17th edition of the Standard Methods for the Examination of Water and Wastewater. The U.S. Environmental Protection Agency periodically revises the standard methods for water quality testing as technology changes; the revised methods reflect the industry standard for testing.

Therefore, the Director finds that proposed 11 AAC 90.043(b) is no less effective than the Federal regulations at 30 CFR 780.21(a), approves proposed 11 AAC 90.043(b) and removes the

required amendment at 30 CFR 902.16(a)(4).

4. 30 CFR 902.16(a)(5), Exemption From Requirements Concerning Topsoil at 11 AAC 90.311(g)

OSM required at 30 CFR 902.16(a)(5) that Alaska delete 11 AAC 90.311(g). This rule provides the Commissioner of the Alaska program with the discretion to authorize an exemption from the requirements for the removal, stockpiling, and redistribution of topsoil and other materials. OSM explained that the Federal regulations at 30 CFR 816.22 do not provide the regulatory authority with the discretion for such an exemption (see finding no. 7, 57 FR 37410 at 37413, August 19, 1992).

In response to the required amendment, Alaska proposed to delete 11 AAC 90.311(g).

Therefore, the Director finds that Alaska's program is now no less effective than the Federal regulations at 30 CFR 816.22(a)(1)(ii) in protecting soil resources, approves the deletion of 11 AAC 90.311(g) and removes the required program amendment at 30 CFR 902.16(a)(5).

5. 30 CFR 902.16(a)(6), Definitions of "Other Treatment Facilities" and "Siltation Structure" at 11 AAC 90.911 and 11 AAC 90.331(d)(1)

OSM required at 30 CFR 902.16(a)(6) that Alaska revise (1) 11 AAC 90.331(a) by defining "other treatment facilities" and to clarify the relationship of "treatment facility(ies)", "water treatment facilities", and "erosion control structures" relative to the term "siltation structure" in a manner that is no less effective than the Federal program requirements; and (2) 11 AAC 90.331(d)(1) to provide for the 10-year, 24-hour precipitation event per the Federal regulation at 30 CFR 816.46(c)(1)(iii)(C) (see finding no. 8, 57 FR 37410 at 37414, August 19, 1992).

Alaska proposed to revise 11 AAC 90.911 by adding definitions of "other treatment facility" and "siltation structure" that are the same as the definitions of these terms in the Federal regulations at 30 CFR 701.5.

Alaska also proposed to revise 11 AAC 90.331(d)(1) so that the design construction and maintenance requirements for sedimentation ponds are substantively the same as the requirements of the Federal regulations at 30 CFR 816.46(c)(1)(iii)(C).

Therefore, the Director finds that (1) the proposed definitions of "other treatment facility" and "siltation structure" at 11 AAC 90.911 are no less effective than the same definitions in the Federal regulations at 30 CFR 701.5

and (2) proposed 11 AAC 90.331(d)(1) is no less effective than the Federal regulation at 30 CFR 816.46(c)(1)(iii)(C). The Director approves them and removes the required program amendment at 30 CFR 902.16(a)(6).

6. 30 CFR 902.16(a)(7), Inspections of Impoundments at 11 AAC 90.337(f)

OSM required at 30 CFR 902.16(a)(7) that Alaska revise 11 AAC 90.337(f) to require that all impoundments be examined on a basis that is no less effective than the Federal requirements at 30 CFR 816.49(a)(11) (see finding no. 9, 57 FR 37410 at 37414, August 19, 1992).

In response to the required amendment, Alaska explained and OSM confirmed that existing rules at 11 AAC 90.337(f) contain the same requirements concerning quarterly inspections as the Federal regulations at 30 CFR 816.49(a)(11). On September 17, 1996, OSM approved revisions to Alaska's program at 11 AAC 90.337(f) as substantively the same as the counterpart Federal regulations at 30 CFR 816.48(a)(11) (see finding no. 11, 61 FR 48835 at 48839, September 17, 1996). OSM failed to remove the required amendment when this Alaska rule was approved.

Therefore, the Director is, based on our September 17, 1996, approval, removing the required program amendment at 30 CFR 902.16(a)(7).

7. 30 CFR 902.16(a)(8), Water Monitoring at 11 AAC 90.345(e)

OSM required at 30 CFR 902.16(a)(8) that Alaska revise 11 AAC 90.345(e) to require that the surface-water monitoring plan include both upstream and downstream monitoring locations in all receiving bodies of water per the Federal regulation requirements at 30 CFR 780.21(j)(2)(i) and 784.14(i)(2)(i) (see finding no. 10, 57 FR 37410 at 37415, August 19, 1992).

Alaska revised 11 AAC 90.345(e), concerning the requirements for surface and ground water monitoring of water bodies that may be affected by the mining operation or that will receive a discharge, to be substantively the same as the requirements in the counterpart Federal regulations at 30 CFR 780.21(j)(2)(i) and 784.14(i)(2)(i).

Therefore, the Director finds that proposed 11 AAC 90.345(e) is no less effective than the Federal regulations at 30 CFR 780.21(j)(2)(i) and 784.14(i)(2)(i), approves proposed 11 AAC 90.345(e) and removes the required program amendment at 30 CFR 902.16(a)(8).

8. 30 CFR 902.16(a)(9), Approval of Coal Mine Waste Disposal in Excess Spoil Fills at 11 AAC 90.391(h)

OSM required at 30 CFR 902.16(a)(9) that Alaska revise 11 AAC 90.391(h) to require that the regulatory authority approve the placement of coal mine waste disposal in excess spoil fills per the Federal requirements at 30 CFR 816.71(i) (see finding no. 11, 57 FR 37410 at 37415, August 19, 1992).

Alaska proposed to revise 11 AAC 90.391(h)(2) to require that an operator demonstrate, prior to approval, that disposal of nontoxic and nonacid forming coal mine waste in an excess spoil fill is consistent with the design stability of the excess spoil fill. This requirement at proposed 11 AAC 90.391(h)(2) is substantively the same as the requirement in the Federal regulations at 30 CFR 816.71(i).

Therefore, the Director finds that proposed 11 AAC 90.391(h)(2) is no less effective than the Federal regulations at 30 CFR 816.71(i), approves proposed 11 AAC 90.391(h)(2) and removes the required program amendment at 30 CFR 902.16(a)(9).

9. 30 CFR 902.16(a)(10), Design of Impounding Structures Constructed of Coal Mine Waste or Intended To Impound Coal Mine Waste at 11 AAC 90.407(e)

OSM required at 30 CFR 902.16(a)(10) that Alaska revise 11 AAC 90.407(e) to provide for a precipitation event no less effective than the requirements of the Federal regulations at 30 CFR 816.84(b)(2) and the use of at least the 6-hour precipitation event for structures meeting the criteria of 30 CFR 77.216(a) (see finding no. 12, 57 FR 37410 at 37415, August 19, 1992).

In response to the required amendment, Alaska explained and OSM confirmed that the existing rule at 11 AAC 90.407(e) contains the same requirements concerning coal mine waste, dams and embankments as in the Federal regulations at 30 CFR 816.84(b)(2). On September 17, 1996, OSM approved revisions to Alaska's program at 11 AAC 90.407(e) as substantively the same as the counterpart Federal regulations at 30 CFR 816.84(b)(2) (see finding no. 2, 61 FR 48835 at 48836). OSM failed to remove the required amendment when this Alaska rule was approved.

Therefore, the Director is, based on our September 17, 1996, approval, removing the required program amendment at 30 CFR 902.16(a)(10).

10. 30 CFR 902.16(a)(11), Endangered and Threatened Species Protection at 11 AAC 90.423(b)

OSM required at 30 CFR 902.16(a)(11) that Alaska revise 11 AAC 90.423(b) to require consultation with Federal and State fish and wildlife agencies prior to making a determination as to whether and under what conditions an operator may continue with mining activities after reporting the presence of a listed endangered or threatened species per the Federal regulation requirements at 30 CFR 816.97(b) (see finding no. 13, 57 FR 37410 at 37415, August 19, 1992).

In response to the required amendment, Alaska explained and OSM confirmed that the existing rule at 11 AAC 90.423(b) contains the same requirements, concerning protection of listed endangered or threatened fish and wildlife, as in the Federal regulations at 30 CFR 816.97(b). On September 17, 1996, OSM approved revisions to Alaska's program at 11 AAC 90.423(b) as substantively the same as the counterpart Federal regulations at 30 CFR 816.97(b) (see finding no. 2, 61 FR 48835 at 48836). OSM failed to remove the required amendment when this Alaska rule was approved.

Therefore, the Director is, based on our September 17, 1996, approval, removing the required program amendment at 30 CFR 902.16(a)(11).

11. 30 CFR 902.16(a)(12), Allowance for Spoil To Be Placed Outside of Mined-Out Area in Nonsteep Slope Areas To Restore the Approximate Original Contour at 11 AAC 90.443(d)

OSM required at 30 CFR 902.16(a)(12) that Alaska revise 11 AAC 90.443(d) to allow blending the spoil into the surrounding terrain in nonsteep slope areas only, and to require the removal of all vegetative and organic material as a requirement for allowing spoil to be placed on the area outside the mined-out area per the Federal regulation requirements at 30 CFR 816.102(d)(2) (see finding no. 14, 57 FR 37410 at 37416, August 19, 1992).

Alaska explained and OSM confirmed that Alaska's existing rule at 11 AAC 90.443(k)(2) already contains requirements concerning blending the spoil into the surrounding terrain in non-steep slope areas that are substantively the same as those in the counterpart Federal regulations at 30 CFR 816.102(d)(2).

Therefore, the Director finds that 11 AAC 90.443(k)(2) is no less effective than the Federal regulations at 30 CFR 816.102(d)(2), approves proposed 11 AAC 90.443(k)(2) and removes the required program amendment at 30 CFR 902.16(a)(12).

12. 30 CFR 902.16(a)(13), Spoil in the Immediate Vicinity of a Remining Operation at 11 AAC 90.443(d)(1)

OSM required at 30 CFR 902.16(a)(13) that Alaska revise 11 AAC 90.443(e)(1) to require that spoil in the immediate vicinity of a remining operation be included in the permit area as required at 30 CFR 816.106(b)(1) (see finding no. 15, 57 FR 37410 at 37416, August 19, 1992).

In response to the required amendment, Alaska explained and OSM confirmed that the existing rule at 11 AAC 90.443(d)(1), concerning backfilling and grading of previously mined areas, contains the same requirements as those in the Federal regulation at 30 CFR 816.106(b)(1). On September 17, 1996, OSM approved revisions to Alaska's program at 11 AAC 90.443(d)(1) as substantively the same as the counterpart Federal regulations at 30 CFR 816.106(b)(1) (see finding no. 2, 61 FR 48835 at 48836). OSM failed to remove the required amendment when these Alaska rules were approved.

Therefore, the Director is, based on our September 17, 1996, approval, removing the required program amendment at 30 CFR 902.16(a)(13).

13. 30 CFR 902.16(a)(16), Submission of Policy Statements or Revision of Rules

OSM required at 30 CFR 902.16(a)(16) that Alaska resubmit policy statements and/or provide proposed regulations for those items addressed in proposed policy statements A through G in a manner no less effective than the Federal regulation requirements (see finding no. 19, 57 FR 37410 at 37417, August 19, 1992).

Policy Statement A, Maintenance of Records

In response to the required amendment, Alaska explained and OSM confirmed that the existing rule 11 AAC 90.907(j) addresses the requirements that copies of all records, reports and inspection materials maintained by the regulatory authority shall be made immediately available to the public until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond in a manner substantively similar to the counterpart Federal regulations at 30 CFR 840.14(b). On September 17, 1996, OSM approved revisions to Alaska's program at 11 AAC 90.907(j) as substantively the same as the counterpart Federal regulation at 30 CFR 840.14(b) (see finding no. 1, 61 FR 48836). OSM failed to remove the required amendment when these rules were approved.

Therefore, the Director, based on OSM's September 17, 1996, approval, finds that Alaska has satisfied that portion of the required amendment at 30 CFR 902.16(a)(16) pertaining to Policy Statement A.

Policy Statement B, Small Operator Assistance Program (SOAP)

Rather than resubmit Policy Statement B, Alaska proposed to revise its regulations at 11 AAC 90.911 by adding a definition of "qualified laboratory" that is identical to the Federal definition at 30 CFR 795.3.

Therefore, the Director finds that the proposed definition of "qualified laboratory" at 11 AAC 90.911 is no less effective than the same definition in the Federal regulation at 30 CFR 795.3 and approves it.

Alaska proposed to revise its regulations at 11 AAC 90.173(a)(2) by increasing the eligible annual coal production rate from 100,000 tons to 300,000 tons for SOAP assistance so that Alaska's rule is substantively the same as the Federal figures at 30 CFR 795.6(a)(2).

Therefore, the Director finds that proposed 11 AAC 90.173(a)(2) is no less effective than the Federal regulation at 30 CFR 795.6(a)(2) and approves proposed 11 AAC 90.173(a)(2).

Alaska proposed to revise its regulations at 11 AAC 90.173(b)(2) and (3) by increasing from 5% to 10%, the baseline percentage above which ownership will play a role in determining "attributed coal production." This requirement in the Alaska proposed rules is substantively the same as the requirement in the Federal regulations at 30 CFR 795.6(a)(2)(i) and (ii).

Therefore, the Director finds that proposed 11 AAC 90.173(b)(2) and (3) are no less effective than the Federal regulations at 30 CFR 795.6(a)(2)(i) and (ii) and approves proposed 11 AAC 90.173(b)(2) and (3).

In response to the Energy Policy Act of 1992, OSM amended its regulations to require funding for additional technical services provided to SOAP applicants. Alaska revised the following regulations so as to provide those same services.

Alaska proposed to revise its regulations at 11 AAC 90.179(a)(3) by adding language that provides SOAP funding not only for the preparation of the statement of results of the test borings or core samplings but for the actual drilling as well in a manner substantively similar to the Federal regulations at 30 CFR 795.9(b)(2).

Therefore, the Director finds that proposed 11 AAC 90.179(a)(3) is no less

effective than the Federal regulation at 30 CFR 795.9(b)(2) and approves proposed 11 AAC 90.179(a)(3).

Alaska proposed to revise its regulations at 11 AAC 90.179(b)(1) through (4) pertaining to data collection requirements for SOAP applicants so that the requirements would be substantively the same as the Federal requirements at 30 CFR 795.9(b)(3) through (6).

Therefore, the Director finds that proposed 11 AAC 90.179(b)(1) through (4) is no less effective than the Federal regulations at 30 CFR 795.9(b)(3) through (6) and approves proposed 11 AAC 90.179(b)(1) through (4).

Alaska proposed to revise its regulations at 11 AAC 90.179(c) by adding language requiring that the SOAP data collected under 11 AAC 90.179 be made available to interested persons as required by the Alaska Statute at AS 27.21.100 and in a substantively similar manner as the Federal regulations at 30 CFR 795.9(d).

The Director finds that proposed 11 AAC 90.179(c) is no less effective than the Federal regulation at 30 CFR 795.9(d) and approves 11 AAC 90.179(c).

Lastly, Alaska proposed to revise its regulations at 11 AAC 90.185(a)(4) and (5) by requiring reimbursement of SOAP funding for "services rendered" should the applicant's 12-month production of coal exceed 300,000 tons in a manner substantively similar to the Federal requirements at 30 CFR 795.12(a)(2) and (3).

Therefore, the Director finds that proposed 11 AAC 90.185(a)(4) and (5) are no less effective than the Federal regulations at 30 CFR 795.12(a)(4) and (5) and approves 11 AAC 90.185(a)(4) and (5). The Director further finds that Alaska has satisfied that portion of required amendment 30 CFR 902.16(a)(16) pertaining to Policy Statement B.

Policy Statement C, Blasting Notice

Rather than resubmit Policy Statement C, Alaska proposed to revise 11 AAC 90.375(f) and (g), concerning the requirement that an operator (1) publish a blasting schedule in local newspapers, at least 10 days, but not more than 30 days before beginning a blasting program and (2) distribute a revised blasting schedule, at least 10 days, but not more than 30 days before blasting in the area covered by the schedule change. The revisions to 11 AAC 90.375(f) and (g) are substantively the same as the Federal regulations at 30 CFR 816.64(b)(1) and (2).

Therefore, the Director finds that proposed 11 AAC 90.375(f) and (g) are

no less effective than the Federal regulations at 30 CFR 816.64(b)(1) and (2), approves 11 AAC 90.375(f) and (g) and finds that Alaska has satisfied that portion of required amendment 30 CFR 902.16(a)(16) pertaining to Policy Statement C.

Policy Statement D, Surface Water Information

In response to the required amendment, Alaska explained and OSM confirmed that the existing rule 11 AAC 90.049(2)(c) and (g) concerning acidity and alkalinity information requirements in a permit application were substantively similar to the counterpart Federal regulation at 30 CFR 780.21(b)(2). On September 17, 1996, OSM approved revisions to Alaska's program at 11 AAC 90.049(2) (see finding No. 1, 61 FR 48836). OSM failed to remove the required amendment when these rules were approved.

Therefore, the Director, based on OSM's September 17, 1996 approval, finds that Alaska has satisfied that portion of the required amendment at 30 CFR 902.16(a)(16) pertaining to Policy Statement D.

Policy Statement E, Scope of Cumulative Hydrologic Impact Assessment

Rather than resubmit Policy Statement E, Alaska proposed to revise its regulations at 11 AAC 90.911 by including a definition of "cumulative impact area" that is identical to the Federal definition at 30 CFR 701.5. Since Alaska's current regulations did not contain the definition of cumulative impact area, the phrase was not present elsewhere in the Alaska regulations which made 11 AAC 90.085(c), pertaining to cumulative hydrologic impact assessment deficient as well. By adding the definition at 11 AAC 90.911, Alaska was then able to revise 11 AAC 90.085(c) by using the phrase in requiring the Commissioner to assess the cumulative hydrologic impacts for the cumulative impact area in a manner no less effective than the Federal regulations at 30 CFR 780.21(g).

Therefore, the Director finds that the proposed definition of "cumulative impact area" at 11 AAC 90.911 and proposed 11 AAC 90.085(c) are no less effective than 30 CFR 701.5 and 30 CFR 780.21(g), respectively, approves the proposed definition of "cumulative impact area" at 11 AAC 90.911 and proposed 11 AAC 90.085(c) and finds that Alaska has satisfied that portion of required amendment 30 CFR 902.16(a)(16) pertaining to Policy Statement E.

Policy Statement F, U.S. Fish and Wildlife Service Information Request

Rather than resubmit Policy Statement F, Alaska proposed to revise 11 AAC 90.057, concerning the requirement that the Commissioner provide resource information for fish and wildlife and the protection and enhancement plan to the U.S. Department of the Interior, Fish and Wildlife Service (Service) regional office or field office for their review, and that the information shall be provided within 10 days of receipt of the request from the Service. The proposed Alaska regulation at 11 AAC 90.057 is substantively similar to the Federal regulation at 30 CFR 780.16(c).

Therefore, the Director finds that proposed 11 AAC 90.057 is no less effective than the Federal regulation at 30 CFR 780.16(c), approves proposed 11 AAC 90.057 and finds that Alaska has satisfied that portion of required amendment 30 CFR 902.16(a)(16) pertaining to Policy Statement F.

Policy Statement G, Determining Peak Discharge for Hydrologic Designs

Rather than resubmit Policy Statement G, Alaska proposed to revise 11 AAC 90.325(b) and (c), concerning the design and construction requirements for the temporary and permanent diversion of miscellaneous flows in a manner that is substantively the same as the counterpart Federal regulation at 30 CFR 816.43(c)(3). Therefore, the Director finds that proposed 11 AAC 90.325(b) and (c) are no less effective than the Federal regulation at 30 CFR 816.43(c)(3) and approves 11 AAC 90.325(b) and (c).

Alaska proposed to revise 11 AAC 90.327(b)(2), concerning the design and construction requirements for both temporary and permanent stream channel diversions in a manner substantively similar to the counterpart Federal regulation at 30 CFR 816.43(b)(3).

Therefore, the Director finds that proposed 11 AAC 90.327(b)(2) is no less effective than the Federal regulation at 30 CFR 816.43(b)(3) and approves proposed 11 AAC 90.327(b)(3).

Alaska proposed to revise 11 AAC 90.336(b)(1) and (2), concerning the requirement that both temporary and permanent impoundments contain a combination of principal and emergency spillways and the design and construction requirements for the spillways. The revised Alaska regulations at 11 AAC 90.336(b)(1) and (2) are substantively the same as the counterpart Federal regulations at 30 CFR 816.49(a)(9)(ii)(B) and (C).

Therefore, the Director finds that proposed 11 AAC 90.336(b)(1) and (2) are no less effective than the Federal regulations at 30 CFR 816.49(a)(9)(ii)(B) and (C) and approves 11 AAC 90.336(b)(1) and (2).

Alaska proposed to revise 11 AAC 90.391(n) pertaining to the requirements for diverting surface water runoff from areas adjacent to and above valley fills as well as runoff from the surface of the fill itself. The proposed Alaska regulation at 11 AAC 90.391(n) is substantively the same as the counterpart Federal regulation at 30 CFR 816.72(a)(2).

Therefore, the Director finds that proposed 11 AAC 90.391(n) is no less effective than the Federal regulation at 30 CFR 816.72(a)(2) and approves 11 AAC 90.391(n).

Alaska proposed to revise 11 AAC 90.407(c), concerning the requirements for diverting surface water runoff from areas above coal waste dams and embankments that may cause instability and erosion. The proposed Alaska regulation at 11 AAC 90.407(c) is substantively the same as the counterpart Federal regulation at 30 CFR 816.84(d).

Therefore, the Director finds that proposed 11 AAC 90.407(c) is no less effective than the Federal regulation at 30 CFR 816.84(d) and approves 11 AAC 90.407(c). The Director further finds that Alaska has satisfied that portion of required amendment 30 CFR 902.16(a)(16) pertaining to Policy Statement G.

Conclusion

Based on the discussion above, the Director removes the required program amendment at 30 CFR 902.16(a)(16).

14. 30 CFR 902.16(a)(17), Petitions for Designating Lands Unsuited for Mining at 11 AAC 90.701

OSM required at 30 CFR 902.16(a)(17) that Alaska resubmit the proposed petition form that requests termination of an unsuitability designation or provide proposed regulations that are no less effective than the Federal regulation requirements at 30 CFR 764.13(b) (see finding no. 20, 57 FR 37410 at 37418, August 19, 1992).

Alaska proposed to revise 11 AAC 90.701(a), (b), (c)(1) and (2), and (d)(1) and (2), concerning the requirements for petitions to designate areas unsuitable for mining, so that the proposed rules contain requirements that are substantively the same as the requirements in the Federal regulations at 30 CFR 764.13.

Therefore, the Director finds that proposed 11 AAC 90.701(a), (b), (c)(1)

and (2), and (d)(1) and (2) are no less effective than the Federal regulations at 30 CFR 764.13, approves them and removes the required program amendment at 30 CFR 902.16(a)(17).

15. 30 CFR 902.16(b)(2), (3), (4), (5), and (6), Definition of "Siltation Structure" at 11 AAC 90.911

OSM required at 30 CFR 902.16(b)(2), (3), (4), (5) and (6) that Alaska add a definition of "siltation structure" that is no less effective than the Federal definition of this term at 30 CFR 701.5, or otherwise revise its program at 11 AAC 90.321(d), 90.323(a), 90.325(a), 90.327(b)(1) and (c) and 90.341(b)(2) (see finding no. 10, 61 FR 48835 at 48838, September 17, 1996).

Alaska proposed to revise 11 AAC 90.911 by adding a definition for "siltation structure" that is substantively the same as the Federal definition of this term at 30 CFR 701.5. As discussed in finding no. C.5 above, the Director is approving Alaska's proposed definition of "siltation structure" at 11 AAC 90.911.

Because the proposed definition of "siltation structure" at 11 AAC 90.911 is no less effective than the same definition in the Federal regulations at 30 CFR 701.5, the Director removes the required program amendments at 30 CFR 902.16(b)(2), (3), (4), (5) and (6).

16. 30 CFR 902.16(b)(7), Requirements for Topsoil on the Area Outside the Mined-Out Area in Nonsteep Slope Areas at 11 AAC 90.391(c) and 90.443(k)(2)

OSM required at 30 CFR 902.16(b)(7) that Alaska revise 11 AAC 90.443(k) to require that the topsoil on the area outside the mined-out area in nonsteep slope areas shall be removed, segregated, stored and redistributed in accordance with its topsoil removal provisions and that the spoil be backfilled and graded on the area in accordance with its provisions concerning performance standards for backfilling and grading, or add provisions to ensure that the disposal of spoil provisions are no less effective than the Federal regulations at 30 CFR 816.102(d)(2) and (3) (see finding no. 14, 61 FR 48835 at 48839, September 17, 1996). (OSM notes that the requirement concerning 11 AAC 90.443(k)(2) discussed here is the same as the requirement at 30 CFR 902.16(a)(12) discussed above in finding no. 11.)

Alaska explained, and OSM confirmed, that the existing Alaska rules at 11 AAC 90.391(c) and 11 AAC 90.443(k)(2) contain requirements that are substantively the same as the requirements in the counterpart Federal

regulation at 30 CFR 816.102(d)(2) and (3).

Therefore, the Director finds that existing 11 AAC 90.391(c) and 90.443(k)(2) are no less effective than the Federal regulations at 30 CFR 816.102(d)(2) and (3), approves them and removes the required program amendment at 30 CFR 902.16(b)(7).

17. 30 CFR 902.16(b)(8), Requirements for Roads That Alter or Relocate Natural Stream Channels and for (1) Structures for Perennial or Intermittent Stream Channel Crossings and (2) Design, Construction, and Maintenance of All Low-Water Crossings at 11 AAC 90.491(f)(3) and (4)

OSM required at 30 CFR 902.16(b)(8) that Alaska revise 11 AAC 90.491(f) to require the addition of provisions concerning the alteration or relocation of natural stream channels, and structures for perennial or intermittent stream channel crossings that are no less effective than 30 CFR 816.151(d)(5) and (6) and 817.151(d)(5) and (6) (see finding no. 15, 61 FR 48835 at 48840, September 17, 1996).

Alaska proposed to revise 11 AAC 90.491(f)(3) and (4), concerning the requirements for roads that alter or relocate natural stream channels and for (1) structures for perennial or intermittent stream channel crossings and (2) design, construction, and maintenance of all low-water crossings. Alaska's proposed rules contain requirements that are substantively the same as those in the Federal regulations at 30 CFR 816.151(d)(5) and (6) and 817.151(d)(5) and (6). Therefore the Director finds that proposed 11 AAC 90.491(f)(3) and (4) are no less effective than the Federal regulations at 30 CFR 816.151(d)(5) and (6) and 817.151(d)(5) and (6), approves them and removes the required program amendment at 30 CFR 902.16(b)(8).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record No. AK-9-4b). In response, by letter dated July 14, 2005, (administrative record No. AK-9-4d), the City of Aleknagik (Aleknagik) commented that it opposed any amendment that would relax the regulations regarding reclamation of mining sites based upon the percentage of coal and felt that in order to protect Alaska's unique qualities, reclamation regulations should be strengthened not reduced regardless of the material that is mined.

Alaska's amendment included proposed rules at 11 AAC 90.901(a)(2), and 11 AAC 90.650 through 11 AAC 90.658, concerning the exemption from provisions governing coal exploration and surface coal mining and reclamation operations incidental to the extraction of other minerals if the coal is 16 $\frac{2}{3}$ percent or less of the total tonnage of minerals removed. These rules are substantively the same as the Federal regulation at 30 CFR part 702 (see finding no. A above).

Alaska submitted the proposed rule revisions in response to a February 7, 1990, letter that OSM sent to Alaska in accordance with 30 CFR 732.17(c), requiring that Alaska adopt rules that are no less effective than the Federal regulations governing the mining of coal incidental to the extraction of other minerals if coal is 16 $\frac{2}{3}$ percent or less of the total tonnage of minerals removed. Alaska's proposed rules set forth, as do the Federal regulations, stringent tests that an applicant must meet in order to demonstrate that the mining of coal is incidental to the mining of other minerals before an application to exempt an operation from the requirements for a permit under Alaska's coal regulatory program would be approved.

Although the Director appreciates the concerns raised by Aleknagik, the Director finds that these concerns have no merit, and does not require further revision of Alaska's rules.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alaska program (administrative record No. AK-9-a). In response, by letter dated June 15, 2004 (administrative record No. AK-9-b), the Bureau of Land Management (BLM), Alaska State Office, submitted comments.

BLM (1) suggested that "fill material" as used at proposed 11 AAC 90.650(E), may actually be quite valuable and should not necessarily be excluded and (2) asked that Alaska define "other minerals" as used at proposed 11 AAC 90.652(M). These proposed rules govern the exemption from the requirement for a permit for coal extraction incidental to the extraction of other minerals. The term "other minerals" is already defined at proposed 11 AAC 90.650(E) to mean any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material; this definition is applicable anywhere this term is used in proposed rules 11 AAC 90.650 through 11 AAC 90.658.

Alaska's use of the term "fill material" in the proposed definition of "other minerals" is identical to the use of the term in the counterpart Federal regulation at 30 CFR 702.5. In the context of this definition, the value of "fill material" is actually recognized but is not at issue; rather the issue concerns the exemption of coal from regulation under Alaska's rules governing surface coal mining and reclamation activities. If coal were to be mined incidental to the mining for commercial value of only topsoil, waste and/or fill material, the operator could not qualify, under proposed rules at 11 AAC 90.650-11 AAC 90.658, for an exemption from the regulation of surface coal mining and reclamation activities. Therefore, OSM required no revisions to the Alaska proposed rules in response to these comments.

BLM also identified a typographical error at proposed 11 AAC 90.395 and noted that there are no "counties" in Alaska with respect to the use of this word at proposed 11 AAC 652(i). OSM notified Alaska of BLM's comment and in Alaska's April 1, 2005, revisions to its proposed amendment, Alaska corrected the typographical error and revised proposed 11 AAC 652(i) to remove the word "counties" and require evidence of publication in a newspaper of statewide circulation and in a newspaper of general circulation in the vicinity of the mining area, of a public notice that an application for exemption (for coal extraction incidental to the extraction of other minerals) has been filed with the regulatory authority. Based on Alaska's response to this comment, OSM required no further revision of Alaska's rules.

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we also requested comments on the revisions to Alaska's proposed amendment from various Federal agencies with an actual or potential interest in the Alaska program (administrative record No. AK-9-4a). In response, by letter dated May 27, 2005 (administrative record No. AK-9-4c), BLM, Alaska State Office, stated that they had reviewed the submitted changes to the proposed Alaska amendment and found them to be consistent and in accordance with SMCRA and had no additional comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (administrative record No. AK-9-a). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 27, 2004, we requested comments on Alaska's amendment (administrative record No. AK-9-a), but neither SHPO or ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we approve Alaska's May 11, 2004, amendment, as revised on April 1 and July 20, 2005. We approve the rules as proposed by Alaska with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 902, which codify decisions concerning the Alaska program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR

730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of \$100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector

of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 2005.

Allen D. Klein,
Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 902 is amended as set forth below:

PART 902—ALASKA

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 902.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

§ 902.15 Approval of Alaska regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 11, 2004	November 29, 2005	11 AAC 90.043(b); 90.045(a), (b), (c), (d), and (e); 90.057; 90.085(a)(5) and (c); 90.089(a)(1); 90.101(a) and (b); 90.173(a)(2), (b)(2) and (3); 90.179(a)(3), (b)(1) through (4) and (c); 90.185(a)(4) and (5); 90.201(d) and (f); 90.211(a); 90.331(d)(1); deletion of 90.311(g); 90.321(e); 90.323(a) through (c); 90.325(b) and (c); 90.327(b)(2); 90.331(e) and (h); 90.336(a), (b)(1) and (2), and (g); 90.337(a); 90.345(e); 90.349(l); 90.375(f) and (g); 90.391(b), (c), (h)(2), (l), and (n); 90.395(a); 90.397(a); 90.401(a), (d), and (e); 90.407(c) and (f); 90.443(a), (k)(2), (i), and (m); 90.447(c)(1); 90.461(b), (g), (h) and (i); 90.491(f)(1), (3) and (4); 90.601(h) and (i); 90.629(a); 90.631(a); 90.635(a) and (b); 90.637(a) and (b); 90.639(a) through (c); 90.641(a) through (d); 90.650 through 90.658; 90.701(a), (b), (c)(1) and (2), and (d)(1) and (2); 90.901(a)(2); and 90.911.

§ 902.16 [Amended]

■ 3. Section 902.16 is amended by removing and reserving paragraphs 902.16(a)(2) through (13); removing paragraphs 902.16(a)(16) and (17); and removing and reserving paragraph (b).

[FR Doc. 05–23400 Filed 11–28–05; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[Docket No. IL–103–FOR]

Illinois Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Illinois Department of Natural Resources, Office of Mines and Minerals (Department or Illinois) is revising its regulations

regarding revegetation success standards, to update statutory citations, to correct regulatory citations, and to clarify language in various provisions. Illinois is revising its program to clarify ambiguities and to improve operational efficiency.

DATES: Effective November 29, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office. Telephone: (317) 226–6700. E-mail: IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Illinois Program
- II. Submission of the Amendment
- III. OSM’s Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. Procedural Determinations

I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary

pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary’s findings, the disposition of comments, and the conditions of approval, in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, 913.16, and 913.17.

II. Submission of the Amendment

By letter dated February 1, 2005 (Administrative Record No. IL–5088), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Illinois sent the amendment at its own initiative. Illinois proposed to amend its regulations at 62 Illinois Administrative Code (IAC) parts 1816 (Surface Mining Operations), 1817 (Underground Mining Operations), and 1823 (Prime Farmland).

We announced receipt of the proposed amendment in the April 4, 2005, **Federal Register** (70 FR 17014). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public