



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

SATS No. AK-007-FOR; Docket ID No. OSM-2011-0017

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S2D2S SS08011000 SX064A000 20XS501520

Alaska Regulatory Program

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

ACTION: Final rule; approval of amendment with four exceptions.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, with four exceptions and six additional requirements, an amendment to the Alaska regulatory program (the Alaska program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment was submitted by Alaska to address changes made at its own initiative and in response to the required program amendment concerning postmining land use. Alaska intends to revise its program to be consistent with the

corresponding Federal regulations and to conform to the drafting manual for the State of Alaska.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Howard Strand, Manager, Denver Field Branch, Telephone: 303-293-5026. Email address: *hstrand@osmre.gov*

SUPPLEMENTARY INFORMATION:

- I. Background on the Alaska Program
- II. Submission of the Proposed Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

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 program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent

with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Alaska program effective on May 2, 1983. You can find background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program 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 September 8, 2011 (Document ID No. OSM-2011-0017-0002), Alaska sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alaska sent the amendment to include changes made at its own initiative and in response to the required program amendment at 30 CFR 902.16(a)(14), requiring consistency with the provisions of 30 CFR 816.116(b)(3)(i), concerning postmining land use. The amendment package submitted by Alaska primarily concerns editorial revisions to AK-006-FOR, an amendment OSMRE approved after Alaska's submission on May 11, 2004, and revised on April 1, 2005. OSMRE approved the revised rules in the **Federal Register** on November 29, 2005 (70 FR 71383) (Document Identification Number (Docket ID No.) OSM-2011-0017-0013).

Alaska explained that the September 8, 2011, proposed revisions were made at the request of the Alaska Department of Law, to conform to the State of Alaska "Drafting Manual for Administrative Regulations" (17th Edition, August 2007). The provisions of the program that Alaska submitted for amendment on September 8, 2011, are: 11 Alaska Administrative Code

(AAC) 90.043(b), water quality analyses; 11 AAC 90.045(a), (b), (c), and (d), description of geology; 11 AAC 90.057(a) and (b), fish and wildlife information; 11 AAC 90.057(c) and 11 AAC 90.423(h), fish and wildlife information; 11 AAC 90.085(a), (a)(5) and (e), plans for protection of the hydrologic balance; 11 AAC 90.089(a)(1), construction plans for ponds, impoundments, dams, and embankments; 11 AAC 90.101(a) through (f), subsidence control plans and the definition of material damage; 11 AAC 90.173(b)(2), eligibility for assistance under the small operator assistance program; 11 AAC 90.179(a)(3), (a)(4) and (a)(5), data collection that would be covered by the small operator assistance program; 11 AAC 90.185(a) and (a)(4), applicant liability under the small operator assistance program; 11 AAC 90.201(d), requirements pertaining to incremental reclamation bonds; 11 AAC 90.211(a), bond release procedures and criteria; 11 AAC 90.321(d), (e), (f), (f)(1) and (f)(2), replacement of water supplies affected by underground mining activities; 11 AAC 90.323(a) and (c), water quality standards; 11 AAC 90.323(b), sediment control measures; 11 AAC 90.325(b) and (c) and 11 AAC 90.327(b)(2), stream channel diversions; 11 AAC 90.331(d)(1), sedimentation ponds; 11 AAC 90.331(e), removal of siltation structures; 11 AAC 90.331(h)(1) and (2), design of other treatment facilities; 11 AAC 90.336(a), (b)(1) and (2), (f), and (g), impoundment design and construction; 11 AAC 90.337(a), impoundment inspection; 11 AAC 90.345(e), requirements for surface water monitoring; 11 AAC 90.349, discharges of water or coal mine waste into an underground mine working; 11 AAC 90.375(f) and (g), public notice of blasting; 11 AAC 90.391(n) and (t), disposal of excess spoil or coal mine waste; 11 AAC 90.395(a), general requirements for coal mine waste; 11 AAC 90.397(a), inspections of disposal areas for excess spoil, underground development waste or coal processing waste; 11 AAC 90.401(a)(1), (b), (d),

(e), and (f), construction plans for coal mine waste refuse piles; 11 AAC 90.407(c)(1) and (2) and (f), coal mine waste dams or embankments; 11 AAC 90.443(a)(2), (k)(2), (l)(2), and (m)(2), requirements for backfilling and grading; 11 AAC 90.444(a) and (b), requirements for backfilling and grading where there is thick or thin overburden; 11 AAC 90.447(c)(1), requirements for auger mining; 11 AAC 90.461, repeal of provisions which provided for rebuttable presumption of causation by subsidence; 11 AAC 90.461(b) and (b)(1) through (3), (g) and (g)(1) through (5), (h) and (h)(1) through (3), (i) and (i)(1) through (3), (j), (k), and (l)(1) through (3), subsidence control; 11 AAC 90.491(f)(1),(f)(2)(E),(f)(2)(E)(iii), (f)(3), and (f)(4), requirements for construction and maintenance of roads; 11 AAC 90.601(h), (i) and (j), definition of and inspections of abandoned sites; 11 AAC 90.629(a), procedures for assessment conference; 11 AAC 90.631(a), requests for a hearing on the fact of a violation or civil penalty; 11 AAC 90.635(a) and (b), when an individual civil penalty may be assessed; 11 AAC 90.637(a) and (b), amounts of individual civil penalty; 11 AAC 90.639(a), (b), and (c), procedures for assessment of an individual civil penalty; 11 AAC 90.641(a), (b), (c), and (d), payments of an individual civil penalty; 11 AAC 90.652 through 11 AAC 90.669, requirements for incidental mining of coal; 11 AAC 90.701(a), (b), and (c), filing of a petition to designate lands as unsuitable for surface coal mining operations; 11 AAC 90.901(a), applicability of Alaska's rules to all coal exploration and surface coal mining and reclamation operations; 11 AAC 90.911(125), definition of "community or institutional building;" 11 AAC 90.911(126), definition of "cumulative impact area;" 11 AAC 90.911(128), definition of "other minerals;" 11 AAC 90.911(129), definition of "other treatment facility;" 11 AAC 90.911(130), definition of "precipitation event;" 11 AAC 90.911(133), definition of "registered professional engineer;" 11

AAC 90.911(134), definition of “registered professional land surveyor;” and 11 AAC 90.911(135), definition of “siltation structure.”

In the September 8, 2011, submission, Alaska also submitted substantive revisions of 11 AAC 90.457(c)(3), concerning standards for revegetation success in areas intended for fish and wildlife habitat. Alaska submitted these revisions in response to OSMRE’s required program amendment codified at 30 CFR 902.16(a)(14).

We announced receipt of the proposed amendment in the November 2, 2011, **Federal Register** (76 FR 67635). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment’s adequacy (Document ID No. OSM-2011-0017-0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 2, 2011. We received comments from two Federal agencies and one State agency.

During our review of the amendment, we initially identified: (1) minor editorial concerns in three rules about subsidence control plans, data requirements for the probable hydrologic consequences in a small operator assistance program, and replacement of lost, contaminated, diminished, or interrupted water supplies; (2) the need for Alaska to include standards for revegetation success in a guideline (rather than as promulgated rules in the Alaska program); and (3) deficiencies in two rules about assessment of civil penalties.

We notified Alaska of these concerns by letter dated January 23, 2012 (Document ID No. OSM-2011-0017-0009).

Alaska responded with a letter dated February 9, 2012, requesting an extension of time to respond to our concerns (Document ID No. OSM-2011-0017-0010). We approved the extension

of time by letter dated February 13, 2012 (Document ID No. OSM-2011-0017-0011).

Alaska responded to OSMRE by sending us a revised amendment (Document ID No. OSM-2011-0017-0012), on March 6, 2012. In response to our concerns, Alaska proposed non-substantive minor editorial revisions of 11 AAC 90.101(e), concerning a subsidence control plan, and 11 AAC 90.321(e), concerning replacement of water supplies. In addition, Alaska withdrew from its proposed amendment the proposed revisions of 11 AAC 90.637(a)(1) through (4) and 11 AAC 90.637(b), concerning civil penalties. Alaska then committed to include these proposed rule revisions as part of another forthcoming program amendment proposal concerning its ownership and control rules. That amendment proposal will be submitted in response to changes in the Federal program, which necessitated changes to the Alaska program to ensure that the State continues to meet the minimum requirements established under SMCRA and its implementing regulations. OSMRE informed Alaska of these required changes by an October 2, 2009, letter sent under the authority of 30 CFR 732.17. The State resubmitted proposed revisions to 11 AAC 90.637(a)(1) through (4) and 11 AAC 90.637(b) for OSMRE's informal review on December 4, 2014. That amendment proposal is currently undergoing OSMRE's informal review process under SATS No. AK-008-INF.

Finally, Alaska also committed to: (1) develop a general guideline for revegetation success standards and sampling techniques for mined lands in Alaska and a list of husbandry practices used in Alaska for forestry and agricultural purposes and (2) pursue legislation for an Alaska statutory revision of Alaska Statute 27.21.220, in which Alaska will add a new provision concerning prompt replacement of water supplies affected by underground mining operations.

We did not reopen the public comment period for the March 6, 2012, proposed revisions

because Alaska did not propose new substantive changes. Instead, the State: (1) withdrew proposed rules concerning civil penalties; (2) committed to separately develop a general guideline concerning revegetation success standards and sampling techniques as well as a list of normal husbandry practices; (3) committed to submit a statutory revision concerning replacement of water supplies; and (4) proposed only non-substantive, minor, editorial revisions of rules that did not alter their meaning or Alaska's intent.

In 2017, we conducted a second review of Alaska's proposed amendment and identified additional concerns pertaining to subsidence control plan requirements for planned subsidence scenarios and two instances where the State proposed to shorten timeframes for requesting administrative review of an agency decision on incidental mining exceptions from 30 days to 20 days. We verbally discussed these concerns with the State on February 21, 2018. The State indicated that it preferred to address all remaining concerns with this amendment after publication of the final rule. For that reason, we are publishing this final rule approving the amendments with a total of four specific exceptions and six additional required amendments, as described below.

III. OSMRE'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 with exceptions and additional requirements as described below.

A. Minor Revisions to Alaska's Rules

Alaska proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously approved rules. In some cases, the provisions are the same or similar to the corresponding Federal provisions. In other cases, the provisions may differ from, but are no less effective than, the corresponding Federal provisions.

The minor wording, editorial, punctuation, grammatical, and recodification changes being addressed in this finding are non-substantive, editorial revisions made upon promulgation of rules previously approved by OSMRE as no less effective than the corresponding Federal provisions. The following list provides the applicable portion of the Alaska Administrative Code followed by the corresponding Federal regulation (including the surface and underground mining provisions where applicable):

- 11 AAC 90.085(a), 30 CFR 780.21(f)(1) and 784.14(e)(1), determination of the probable hydrologic consequences;
- 11 AAC 90.201(d), 30 CFR 800.11(b)(1) through (4), incremental bonding;
- 11 AAC 90.211(a), 30 CFR 800.40(a)(1) and (3), bond release procedures and criteria;
- 11 AAC 90.331(h)(1), 30 CFR 30 CFR 816.46(d)(1) and (2), water treatment facility design;
- 11 AAC 90.375(f) and (g), 30 CFR 816.64(a)(1) and (b), distribution and public notice of blasting schedules;
- 11 AAC 90.395(a), 30 CFR 816.81(a) and 817.81(a), coal mine waste, general requirements;
- 11 AAC 90.401(a)(1), (d) and (e), 30 CFR 816.83 and 817.83, coal mine waste refuse

piles;

- 11 AAC 90.407(f), 30 CFR 816.84(f), coal mine waste dams and embankments;
- 11 AAC 90.443(a)(2), (k)(2), (l)(2), and (m)(2), 30 CFR 816.102(a)(2), (d)(2) and (3) and (k)(1) and (2), backfilling and grading;
- 11 AAC 90.461(b) and (b)(1) through (3), 30 CFR 817.121(a)(1) and (a)(2), prevention or minimization of subsidence damage or planned subsidence;
- 11 AAC 90.461(h) and (h)(1) through (3), 30 CFR 817.121(c)(5), performance bond for subsidence repair;
- 11 AAC 90.461(i)(1) through (3), 30 CFR 817.121(c)(5), no performance bond for subsidence repair needed for repairs made within 90 days;
- 11 AAC 90.461(j), 30 CFR 817.121(c)(4)(v), use of available information for subsidence determination;
- 11 AAC 90.491(f)(1), 30 CFR 816.151(a) and 817.151(a), construction of roads, certification of plans and drawings;
- 11 AAC 90.491(f)(3) and (f)(4), 30 CFR 816.151 (d)(5) and (6) and 817.151(d)(5) and (6), approval for relocation of stream channels, and structures for crossing intermittent or perennial streams;
- 11 AAC 90.629(a), 30 CFR 845.18(a), concerning procedures for assessment conference;
- 11 AAC 90.631(a), 30 CFR 845.19(a) and 846.17(b)(1), concerning requests for a hearing on the fact of a violation or civil penalty;
- 11 AAC 90.635(b), 30 CFR 846.12(b), when an individual civil penalty may be assessed;

- 11 AAC 90.639(a), (b) and (c), 30 CFR 846.17(a) through (c), procedure for assessment of individual civil penalty;
- 11 AAC 90.701(b) and (b)(1) through (b)(5), 30 CFR 764.13(c)(1) and (c)(2), content requirements for petitions to terminate designation of lands as unsuitable for surface coal mining operations;
- 11 AAC 90.701(c) and (c)(1) through (c)(3), 30 CFR 764.13(c)(1), content requirements for petitions to terminate designation of lands unsuitable for surface coal mining operations;
- 11 AAC 90.901(a)(1), (2) and (3), 30 CFR 700.11(a)(1),(2), and 4), applicability of regulations;
- 11 AAC 90.911(125), 30 CFR 761.5, definition for “community or institutional building;”
- 11 AAC 90.911(135), 30 CFR 701.5, definition for “siltation structure;”
- 11 AAC 90.911, 30 CFR 795.3 and 795.10, deletion of definition for “qualified laboratory,” and 11 AAC 90.181, insertion of definition for “qualified laboratory”;
- 11 AAC 90.911, 30 CFR 816.104(a) and 816.105(a), deletion of definitions for “thick overburden” and “thin overburden,” and 11 AAC 90.444, insertion of definitions for “thick overburden” and “thin overburden”; and
- 11 AAC 90.911, 30 CFR 701.5 , deletion of definitions for “drinking, domestic, or residential water supply,” “material damage,” “non-commercial building,” “occupied residential dwelling and structures related thereto,” and “replacement of water supply,” and 11 AAC 90.461, insertion of definitions of “drinking, domestic, or residential water

supply,” “material damage,” “non-commercial building,” “occupied residential dwelling and structures related thereto,” and “replacement of water supply”.

Because these changes to the Alaska program are minor and primarily editorial in nature, we find that they are no less effective than the corresponding Federal regulations, and we approve them.

B. 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. The following list provides the applicable portion of the Alaska Administrative Code followed by the corresponding Federal regulation (including the surface and underground mining provisions where applicable):

- 11 AAC 90.043(b), 30 CFR 780.21(a), hydrology and geology;
- 11 AAC 90.045(a) through (d), 30 CFR 780.22(b) through (d), geology description;
- 11 AAC 90.057(a) and (b), 30 CFR 780.16(a)(1), fish and wildlife information;
- 11 AAC 90.057(c) and deletion of duplicative provision at 11 AAC 90.423(h), 30 CFR 780.16(c), fish and wildlife information;
- 11 AAC 90.085(a)(5), 30 CFR 30 CFR 784.14(e)(3)(iv), plan for protection of the hydrologic balance;
- 11 AAC 90.085(e), 30 CFR 784.14(f)(1), probable hydrologic consequences and cumulative hydrologic impacts;
- 11 AAC 90.089(a)(1), 30 CFR 780.25(a)(1)(i) and 784.16(a)(1)(i), certification by a

qualified, registered professional engineer (PE) or other qualified professional of plans for siltation structures, impoundments, coal mine waste dams, or embankments;

- 11 AAC 90.101(a) through (f), 30 CFR 701.5, 784.20(a) and (b), subsidence control plan;
- 11 AAC 90.179(a)(3), (a)(4) and (a)(5), 30 CFR 795.9(a) and (b)(1) through (6), small operator assistance program and probable hydrologic consequences data requirements;
- 11 AAC 90.185(a) and (a)(4), 30 CFR 795.12(a)(2), small operator assistance program, applicant liability;
- 11 AAC 90.321(f), (f)(1) and (f)(2), 30 CFR 701.5, definition of “replacement of water supply;”
- 11 AAC 90.325(b) and (c), 30 CFR 816.43(c)(3) and 817.43(c)(3), diversions and conveyance of flow;
- 11 AAC 90.327(b)(2), 30 CFR 816.43(b)(2) and (3), stream channel diversions, precipitation (design) events;
- 11 AAC 90.331(d)(1), 30 CFR 816.46(c)(1)(iii)(C), sedimentation pond design capacity;
- 11 AAC 90.336(a), 30 CFR 780.25(a)(1)(i) and 816.49(a)(3), impoundment design and construction;
- 11 AAC 90.336(b)(1) and (2), 30 CFR 816.49(a)(9)(ii)(B) and (C), impoundment spillway design;
- 11 AAC 90.336(f) and (g), 30 CFR 816.49(a)(1), impoundment design;
- 11 AAC 90.337(a), 30 CFR 816.49(a)(11), impoundment inspection;
- 11 AAC 90.345(e), 30 CFR 780.21(j)(1), 784.14(i)(2)(i), surface- and ground-water

monitoring plans;

- 11 AAC 90.349, 30 CFR 816.41(i) and 30 CFR 817.41(h), discharge of water or coal mine waste into an underground mine;
- 11 AAC 90.391(n) and (t), 30 CFR 816.72(a) and 817.72(a), drainage control on valley fills;
- 11 AAC 90.391(t), 816.83(c)(2) and 817.83(c)(2), refuse pile configuration;
- 11 AAC 90.397(a), 816.71(h), 30 CFR 816.83(d), 817.71(h), and 817.83(d), coal mine waste disposal area inspections;
- 11 AAC 90.401(b) and (f), 30 CFR 816.81 and 816.83, coal mine waste refuse piles;
- 11 AAC 90.407(c)(1) and (2), 30 CFR 816.84(d) and 817.84(d), coal mine waste dams and embankments;
- 11 AAC 90.423(h), 30 CFR 780.16(c), protection of fish and wildlife;
- 11 AAC 90.444(a) and (b), 30 CFR 816.104(a) and 816.105(a), backfilling and grading, thick and thin overburden;
- 11 AAC 90.447(c)(1), 30 CFR 819.15(b)(1), requirements for auger mining;
- 11 AAC 90.461, 30 CFR 817.121(c)(4), repeal of provisions providing for rebuttable presumption of causation by subsidence;
- 11 AAC 90.461(g) and (g)(1) through (5), 30 CFR 817.121(g), detailed plan of underground workings;
- 11 AAC 90.461(k), 30 CFR 817.121(c)(5), bond calculation for replacement of water supply;

- 11 AAC 90.461(l)(1)(A) through (C), 30 CFR 701.5, definition of “material damage;”
- 11 AAC 90.461(l)(2), 30 CFR 30 CFR 701.5, definition of “non-commercial building;”
- 11 AAC 90.461(l)(3)(A) and (B), 30 CFR 701.5, definition of “occupied residential dwelling and related structures;”
- 11 AAC 90.491(f)(2)(E) and (f)(2)(E)(iii), 30 CFR 816.151(d)(2) and 817.151(d)(2), construction and maintenance of roads, transportation and support facilities, and utility installations;
- 11 AAC 90.601(h), (i) and (j), 30 CFR 840.11(g), and (h), definition and inspection of abandoned sites;
- 11 AAC 90.635(b), 30 CFR 846.12(b), assessment of individual civil penalties;
- 11 AAC 90.701(a) and (a)(1) through (a)(6), 30 CFR 764.13(a) and (b), content requirements for petitions to designate lands unsuitable for surface coal mining operations;
- 11 AAC 90.911(126), 30 CFR 701.5 and 740.5(a), definition of “cumulative impact area;”
- 11 AAC 90.911(128), 30 CFR 702.5, definition of “other minerals;”
- 11 AAC 90.911(129), 30 CFR 701.5, definition of “other treatment facility;” and
- 11 AAC 90.911(130), 30 CFR 701.5, definition of “precipitation event.”

Because these proposed rules contain language that is identical to or is substantially similar to the corresponding Federal regulations, we find that Alaska’s proposed amendments are no less effective than the corresponding Federal regulations, and approve them with one

additional requirement about subsidence control plans. As proposed, 11 AAC 90.101(e) omits counterpart language to 30 CFR 784.20(b)(7). This provision pertains to subsidence control plan requirements related to minimizing damage to non-commercial buildings and occupied residential dwellings in planned subsidence scenarios. OSMRE conditionally approves the current revisions to 11 AAC 90.101(e), with the addition of a new required amendment at 30 CFR 902.16 requiring Alaska to add the omitted provision.

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

1. 11 AAC 90.173(b)(2), Eligibility for the Small Operator Assistance Program (SOAP)

Alaska proposed language at 11 AAC 90.173(b)(2), which requires all coal produced by a parent company and all of its subsidiaries to be attributed to the applicant of a SOAP grant. This is no less effective than the counterpart Federal regulation at 30 CFR 795.6(a)(2)(i) and (ii). The Federal regulation requires production to be attributed to the SOAP applicant when a proportional ratio of coal produced by operations that the applicant owns more than 10 percent, the proportional share of other operations owned by persons who own more than 10 percent of the applicant's operation, and operations owned by persons who directly or indirectly control the applicant by reason of direction of the management, and operations owned by members of the applicant's family and the applicant's relatives unless it is established that there is no direct or indirect business relationship. Alaska has proposed deletion of rules previously approved by OSMRE that were substantively identical to the Federal provisions of 30 CFR 795.6(a)(2)(i) and (ii). Alaska's rule now determines eligibility based on all coal produced under a parent company

rather than proportional amounts of coal produced under proportional ownership. Under the proposed Alaska regulations, more coal would be attributed to the small operator acting under a parent company, which owns or controls other coal mines, thereby reducing the number of applicants who would qualify for SOAP assistance. The proposed Alaska rule is also consistent with the overriding statute at AS 27.21.120.

30 CFR 795.6(b) allows States to adopt alternate criteria or procedures for determining eligibility for SOAP, provided that those criteria will not provide a basis for more grant requests than would be authorized under Federal requirements.

Alaska stated in its Statement of Basis and Purpose, submitted with the proposed amendment, that the adoption of the new language results in the Alaska rule being more stringent than the corresponding Federal regulation by limiting the number of eligible applicants.

OSMRE agrees and finds no evidence that the proposed Alaska provision would provide a basis for more grant requests than would be authorized under Federal requirements. Therefore, OSMRE finds that Alaska's proposed 11 AAC 90.173(b)(2), concerning the eligibility of a SOAP applicant, is no less effective than the counterpart Federal regulations at 30 CFR 795.6(a)(2)(i) and (ii) and 30 CFR 795.6(b), and approves it.

2. 11 AAC 90.321(d), Hydrologic Balance, Prevention or Minimization of Pollution and Operation of Water Treatment Facilities

Alaska proposed to revise 11 AAC 90.321(d), concerning the requirement to conduct surface coal mining operations to prevent or minimize water pollution. Alaska proposed to remove the discretion of the Alaska Commissioner to discontinue operation of necessary water

treatment facilities. In other words, Alaska's proposed rule would now require the operation of necessary water treatment facilities for as long as treatment is required under the program.

The requirement for treatment to satisfy water quality standards is inherent throughout the Federal program and more specifically required in the Federal regulations at 30 CFR 816.41(a) and 816.42. Those regulations require operations to be conducted to minimize disturbance of the hydrologic balance and all discharges to be made in compliance with all applicable State and Federal water quality laws and regulations. Therefore, OSMRE finds that Alaska's proposed deletion of the Alaska Commissioner's discretionary authority serves to ensure that the requirement 11 AAC 90.321(d) is no less effective in protecting the hydrologic balance than the counterpart Federal regulations at 30 CFR 816.41(a) and 816.42, and approves it.

3. 11 AAC 90.321(e), Hydrologic Balance, Prevention or Minimization of Pollution and Replacement of Damaged Water Supplies

Alaska proposed to revise 11 AAC 90.321(e)(1) and (2), concerning the replacement of a water supply of an owner of interest in real property, who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source. Alaska proposed the revision to ensure that the rule applies if the water supply had been contaminated, diminished, or interrupted by surface or underground mining activities conducted after October 24, 1992, and if the affected water supply was in existence before the date the Alaska Commissioner received the permit application for the activities affecting and requiring replacement of the water supply. These changes are intended to

satisfy certain requirements of the Energy Policy Act, which was passed on October 24, 1992, and codified as section 720 of SMCRA, 30 U.S.C. 1309a, as well as additional requirements within OSMRE's regulations. The counterpart Federal regulation at 30 CFR 817.41(j) requires the replacement of certain drinking, domestic or residential water supplies that are contaminated, diminished, or interrupted by underground mining activities. The Federal regulation at 30 CFR 701.5 defines "drinking, domestic or residential water supply" as water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or house hold use. Excluded from this definition are wells and springs that serve only agricultural, commercial, or industrial enterprises, unless the water supply is for direct human consumption or human sanitation, or domestic use.

By revising 11 AAC 90.321(e) to apply to not only underground mining activities, but also to surface mining activities, the counterpart Federal regulation for surface mining also applies. This counterpart Federal regulation at 30 CFR 816.41(h) requires the replacement of certain water supplies for domestic, agricultural, industrial, or other legitimate use that are contaminated, diminished, or interrupted by surface mining activities. By revising 11 AAC 90.321(e) to apply to certain water supplies for domestic, agricultural, industrial, or other legitimate use, rather than certain drinking, domestic, or residential water supplies, Alaska has expanded the scope of the rule to protect more types of water supplies than protected under the counterpart Federal regulation at 30 CFR 817.41(j), if the water supply was contaminated, diminished, or interrupted by underground mining activities. Therefore, proposed 11 AAC 90.321(e) is more stringent than the counterpart Federal regulations at 30 CFR 817.41(j) and 816.41(h), as to the type of water supply to be protected. Therefore, in this context, OSMRE

finds that the Alaska regulations is no less effective than the applicable Federal counterpart.

In addition, proposed 11 AAC 90.321(e) is no less effective than 30 CFR 817.41(j) and 816.41(h) in requiring replacement of water supplies affected by underground and surface mining activities conducted after October 24, 1992, as required by 30 U.S.C. 1309a.

However, proposed 11 AAC 90.321(e) is less effective than 30 CFR 816.41(h), with respect to protecting water supplies affected by surface mining activities to the extent that it does not protect those water supplies affected by surface mining activities conducted on or before October 24, 1992.

With the exception that proposed 11 AAC 90.321(e) does not protect those water supplies affected by surface mining activities conducted on or before October 24, 1992, OSMRE finds that 11 AAC 90.321(e) is no less effective than 30 CFR 817.41(j) and 816.41(h). However, with respect to protecting water supplies affected by surface mining activities on or before October 24, 1992, OSMRE does not approve the phrase “conducted after October 24, 1992” proposed for addition under 11 AAC 90.321(e)(1) as it relates to surface coal mining activities. 11 AAC 90.321(e) therefore requires further revision to ensure protection of water supplies affected by surface coal mining activities on or before October 24, 1992. To address this issue, OSMRE approves the current revisions, with this one exception and the addition of a required amendment at 30 CFR 902.16, that, in accordance with 30 CFR 816.41(h), Alaska must further revise 11 AAC 90.321(e) to ensure protection of water supplies affected by surface coal mining activities conducted on or before October 24, 1992.

In addition, following passage of the Energy Policy Act of 1992, OSMRE issued a Notice of Decision that required Alaska, among other states, to implement its requirements codified in

section 720 of SMCRA (30 U.S.C. 1309a) (60 FR 38482, 38483, July 27, 1995). Alaska indicated it would amend its statute at AS 27.21.220 to add subsection (c) requiring prompt repair or compensation for material damage resulting from subsidence, and prompt replacement of water supplies affected by underground mining operations. In Alaska's March 6, 2012, response to OSMRE's January 23, 2012, concern letter, Alaska committed to amending its statute concerning replacement of water supplies during the 2012 legislative session. But Alaska's response was silent with respect to the requirement that Alaska revise its statute to require prompt repair or compensation for material damage resulting from subsidence. Alaska did not revise its statute during the 2012 legislative session. Because this statutory authority is necessary to implement the required changes to 11 AAC 90.321(e), OSMRE is conditioning approval of that part upon Alaska's submission of a state program amendment to AS 27.21.220. Therefore, OSMRE is adding another required amendment at 30 CFR 902.16, that requires, in accordance with the Energy Policy Act enacted on October 24, 1992, Alaska to submit, no later than the end of the 2019 legislative session, a statutory revision requiring prompt repair or compensation for material damage resulting from subsidence, and prompt replacement of water supplies affected by underground mining operations.

4. 11 AAC 90.323(a), (b) and (c), Treatment of Disturbed Surface Drainage to Meet Water Quality Laws and Regulations

Alaska, at 11 AAC 90.323(a), proposed revisions to require that all discharges of water from areas disturbed by surface and underground mining activities must be made in compliance with all applicable federal water quality laws and regulations, with all applicable provisions of

AS 46.03 and regulations in effect under that chapter, and with the effluent limitations for coal mining promulgated by the United States Environmental Protection Agency (EPA) set out in 40 CFR Part 434, adopted by reference in 11 AAC 90.001(b). In doing so, Alaska proposed deletion from 11 AAC 90.323(a) of the requirement that, with certain exceptions, such discharges must pass through one or more siltation structures before leaving the permit area.

The Federal regulations at 30 CFR 816.42 require that discharges of water from areas disturbed by surface mining activities must be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the EPA set forth in 40 CFR Part 434.

Effective December 22, 1986, OSMRE suspended the Federal counterpart language at 30 CFR 816.46(b)(2) requiring that all discharges pass through a siltation structure. *See* Finding No. 16 at 51 FR 41957 (Nov. 20, 1986). OSMRE suspended this requirement in response to a remand by the court in *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144 (D.D.C. 1985). 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).

OSMRE no longer defines BTCA as being siltation structures as we previously did in the now-suspended 30 CFR 816.46(b)(2). Instead, OSMRE concludes that the regulatory authority must determine on a case-by-case basis what constitutes BTCA consistent with the definition of the term found at 30 CFR 701.5. Although OSMRE anticipates that sedimentation ponds or some other siltation structure will most likely be the BTCA; a specific determination should be

made by the regulatory authority. Therefore, OSMRE approves Alaska's proposed deletion of this language from 11 AAC 90.323(a) with the understanding that the case-by-case analysis of BTCA is performed by Alaska.

Alaska's proposed 11 AAC 90.323(a) contains requirements that are the same as or similar to the counterpart Federal regulation at 30 CFR 816.42, concerning protection of the hydrologic balance.

Alaska proposed to revise 11 AAC 90.323(b), concerning the allowance for other sediment control measures after disturbed areas have been regraded, topsoil replaced, and stabilized against erosion, if the Alaska Commissioner and the EPA have approved the use of best management practices as the effluent limitation. Alaska proposed to replace "EPA" with the State agency now delegated EPA's authority, the Alaska Department of Environmental Conservation. This proposed rule revision clarifies the Alaska program without changing the meaning or intent of the rule. The proposed rule is otherwise consistent with the Federal counterpart regulation at 30 CFR 816.45 concerning the use of appropriate sediment control measures.

Alaska proposed to delete from its program the requirement, at 11 AAC 90.323(c), that the operator must meet all applicable Federal and State water quality laws and regulations for the mixed drainage from the permit area when there is mixing of drainage from disturbed, reclaimed, and undisturbed areas. This requirement is redundant of the requirements proposed at paragraph 11 AAC 90.323(a) and discussed above. Therefore, based on the discussion above, OSMRE finds that Alaska's proposed 11 AAC 90.923(a) and (b), with the proposed deletion of 11 AAC 90.923(c), are no less effective than the counterpart Federal regulations at 30 CFR 816.42,

816.45 and 816.46. Therefore, we approve these portions of the Alaska program amendment.

5. 11 AAC 90.331(e), Maintenance, Removal and Retention of Siltation Structures

Alaska proposed editorial revisions at 11 AAC 90.331(e), concerning maintenance, removal and retention of siltation structures, added specificity or clarified grammar without changing the meaning of the rule. In addition, Alaska proposed to reference the requirements of 11 AAC 90.321(a) through (d) and 11 AAC 90.323, rather than 11 AAC 90.323(b), for the Alaska Commissioner's authority to authorize removal of siltation structures.

With one exception, Alaska's proposed rule is the same as or substantially similar to the counterpart Federal regulation at 30 CFR 816.46(b)(5), which requires siltation structures to be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated and that, in no case, will the structure be removed sooner than two years after the last augmented seeding.

The exception is that Alaska's proposed rule references the requirements of 11 AAC 90.321(a) through (d) and 11 AAC 90.323 for the Alaska Commissioner's authority to authorize removal of siltation structures, while the counterpart Federal regulation states only that removal must be authorized by the regulatory authority. Alaska's referenced rules at 11 AAC 90.321(a) through (d) and 11 AAC 90.323 pertain to, respectively, requirements for protection of the hydrologic balance and the requirement that discharges of water from areas disturbed by surface and underground mining activities must be made in compliance with all applicable Federal and State water quality statutes and regulations. Alaska's proposed reference to these rules provides specificity and clarification. Therefore, based on the above discussion, OSMRE finds that

proposed 11 AAC 90.331(e) is the same as or substantially similar to, and no less effective than the counterpart Federal regulation at 30 CFR 816.46(b)(4), and we approve it.

6. 11 AAC 90.331(h)(2), Other Treatment Facilities

Alaska proposed non-substantive editorial revisions at 11 AAC 90.331(h)(2), concerning design of other treatment facilities. In addition, Alaska proposed to revise 11 AAC 90.331(h)(2) to require other treatment facilities to be designed in accordance with “11 AAC 90.336 and 11 AAC 90.338” rather than “the applicable requirements of this section.”

The counterpart Federal regulations at 30 CFR 816.46(d)(1) and (2) require that other treatment facilities must be designed: (1) to treat the 10-year, 24-hour precipitation event, unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of 30 CFR 816.42 will be met; and (2) in accordance with the applicable requirements of 30 CFR 816.46(c), specifically discussing sedimentation ponds.

Alaska’s proposed rule at 11 AAC 90.331(h)(2) requires other treatment facilities to be designed in accordance with 11 AAC 90.336 and 11 AAC 90.338 where the counterpart Federal regulations require design in accordance with 30 CFR 816.46(c). The referenced rules, at 11 AAC 90.336 and 11 AAC 90.338, pertain to, respectively, temporary and permanent impoundment design and construction and permanent impoundment criteria. Alaska’s referenced rules provide design criteria while the counterpart Federal regulations at 30 CFR 816.46(c) provide performance standards. Both pertain to the design of sedimentation ponds. Alaska’s design criteria are more specific than, and no less effective than, the counterpart Federal

performance standards. Therefore, based on the above discussion, OSMRE finds that Alaska's proposed rule at 11 AAC 90.331(h)(2), concerning design of other treatment facilities, is no less effective than the counterpart Federal regulation concerning other treatment facilities at 30 CFR 816.46(d)(2), and approves the changes.

7. 11 AAC 90.635(a), When an Individual Civil Penalty May be Assessed

At existing paragraph (a) of 11 AAC 90.635, Alaska states that a civil penalty may be assessed against a corporate director, officer, or agent of the corporate permittee when the individual knowingly and willfully authorizes, orders, or carries out a violation, "failure or refusal." Alaska proposed to revise this paragraph to delete the quoted phrase and state that it may assess an individual civil penalty when there is a violation "of AS 27.21, this chapter, or a permit condition." Referenced AS 27.21 is the Alaska Surface Coal Mining Control and Reclamation Act. "[T]his chapter" is Chapter 90, Surface Coal Mining, of the Alaska Administrative Code.

The federal counterpart requirement of paragraph (a) of 30 CFR 846.12 addresses the same individuals and types of actions by these individuals. This regulation explains that an individual civil penalty may be assessed when there is a "violation, failure or refusal." The Federal regulations at 30 CFR 701.5 define "violation, failure or refusal" and "violation." Alaska does not have counterpart definitions for these terms in its program, although it committed to proposing them by September 2013 in a rulemaking package in response to OSMRE's October 2, 2009, 30 CFR Part 732 letter, concerning ownership and control. The State submitted its proposed definitions for OSMRE's informal review on December 4, 2014.

That amendment proposal is currently undergoing the informal review process under SATS No. AK-008-INF.

By proposing to insert in 11 AAC 90.635(a) the phrase “of AS 27.21, this chapter, or a permit condition” in place of the phrase “failure or refusal,” Alaska would consider all violations of any part of AS 27.21, which is the Alaska Surface Coal Mining Control and Reclamation Act; all violations of any part of 11 AAC Chapter 90, which is the chapter containing all of the Alaska Department of Natural Resource’s regulations governing coal mining; and violations of any conditions the Alaska Department of Natural Resources imposes when it issues a permit. These violations of the Alaska program include those encompassed by the 30 CFR 846.12(a) phrase “violation, failure or refusal” and the 30 CFR 701.5 definitions of the terms “violation, failure or refusal” and “violation.”

Therefore, based on the above discussion, OSMRE finds that the proposed individual civil penalty requirements of 11 AAC 90.635(a) are no less effective than the corresponding requirements of 30 CFR 846.12(a), and we approve it.

8. 11 AAC 90.641(a), (b), (c) and (d), Payment of Individual Civil Penalties

Alaska proposed revisions of 11 AAC 90.641(a) to require that, with exceptions in (b) and (c), individual civil penalties must be paid within 30 days of the issuance of a notice of proposed individual civil penalty assessment. This effectively gives the individual 30 days to either pay (thereby rendering the proposed penalty final) or contest the penalty (with payment due upon issuance of the final written decision). The counterpart Federal regulation at 30 CFR 846.18(a) requires that these penalties are due upon issuance of the final order.

Alaska proposed revisions of 11 AAC 90.641(b) to require that, if the individual contests the amount of the penalty or the fact of the violation, in accordance with AS 27.21.250(b) and 11 AAC 90.639(b), the penalty is due upon issuance of a final written decision (rather than administrative order) affirming, increasing, or decreasing the proposed penalty.

In paragraph (b), Alaska references 11 AAC 90.639(b) and AS 27.21.250(b) for contesting individual civil penalties. Revised 11 AAC 90.639(b) requires the notice of proposed individual civil penalty assessment to become a final decision 30 days after service, unless the individual contests the amount of the penalty or the fact of the violation, in accordance with AS 27.21.250(b), or Alaska agrees to a plan and schedule for abatement or correction of the violation. Alaska Statute 27.21.250(b) provides information on how an individual contests the amount of the penalty or the facts of the violation. These references are correct and appropriate.

Proposed 11 AAC 90.641(a) and (b) are similar to, and no less effective than, the counterpart Federal regulation at 30 CFR 846.18(a) and (b), which provides that, if an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty will be due upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty.

Proposed 11 AAC 90.641(c) is no less effective than its Federal counterpart at 30 CFR 846.18(c), which requires that, when a written agreement or plan for abatement or compliance of an order is reached, the individual may postpone payment until receiving either a final order that payment is due or written notification that the penalty has been withdrawn. The proposed Alaska provision does not discuss postponement of payment or withdrawal of penalties. Because these options are implicit in the Alaska Commissioner's and individual's ability to agree upon a

schedule or plan for the abatement or correction of the violation, Alaska's proposed 11 AAC 90.641(c) requires that the penalty is due only when the abatement or correction has not been satisfactory and a final written decision of the penalty amount has been issued.

Alaska proposed to delete, from 11 AAC 90.641(d), language concerning the accrual of interest and late charges with references to the U.S. Department of Treasury. The language proposed for deletion reflects requirements placed on OSMRE by the Debt Collection Act of 1982 (97 P.L. 365), which applies only to debts owed to the Federal government. Alaska is not bound by these obligations and it does not need to adopt similar language. Therefore, OSMRE can approve the deletion of OSMRE-specific language proposed at 11 AAC 90.641(d).

Alaska also proposed editorial revisions of 11 AAC 90.641(d)(1) through (5), concerning overdue payments of civil penalties. These revisions add specificity and do not substantively revise the actions that the Alaska Commissioner may take if the penalty is not paid. Therefore, OSMRE finds that Alaska's proposed 11 AAC 90.641(d)(1) through (5) adds specificity, but has the same effect as the Federal regulations at 30 CFR 870.23(a) through (f), which are referenced in the counterpart Federal regulation at 30 CFR 846.18(d). Therefore, Alaska's proposed 11 AAC 90.641(d), concerning overdue payments of civil penalties, is no less effective than the counterpart Federal regulations at 30 CFR 846.18(d) and 30 CFR 870.23(a) through (f).

Based on the above discussion, OSMRE finds that proposed 11 AAC 90.641(a), (b), (c) and (d) are no less effective than the counterpart Federal regulations at 30 CFR 846.18 and 870.23, and we approve them.

9. 11 AAC 90.652, 654, 656, 658, 660, 662, 664, 666 and 669, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

Alaska, with four exceptions, has proposed at 11 AAC 90.652, 654, 656, 658, 660, 662, 664, 666 and 669, recodification, non-substantive editorial revisions and editorial revisions that add specificity without changing the meaning or implementation of Alaska's rules concerning the exemption for extraction of coal incidental to the mining of other minerals. The exceptions are 11 AAC 90.652(d) concerning public notice requirements, 11 AAC 90.652(g)(1) concerning the timeframe for requesting administrative review of an agency decision, 11 AAC 90.656 concerning the public availability of information, and 11 AAC 90.664(c) concerning the timeframe for requesting administrative review of an agency decision. These exceptions are discussed below.

11 AAC 90.652(d), Public Notice Requirements. Alaska has proposed to delete the requirement, at 11 AAC 90.654, that the applicant provide evidence of public notice in an application for incidental mining (previously codified as 11 AAC 90.652(i)). In place of the deleted provision, Alaska, at 11 AAC 90.652(d), proposed to require that the Alaska Commissioner provide public notice and receive comment on an application for an incidental mining exemption, in accordance with 11 AAC 90.907.

The counterpart Federal regulation, 30 CFR 702.12(i), requires that the applicant provide evidence of public notice in a newspaper of general circulation in the county of the mining area. Although Alaska's program at proposed 11 AAC 90.652(d) requires that the Alaska Commissioner provide notice of the application for mining of coal incidental to the mining of other minerals, Alaska's proposed 11 AAC 90.652(d) is no less effective than the Federal regulations at 30 CFR 702.12(i), which requires that the applicant publish notice. The public will be provided effective notice and an opportunity to comment, for a period of no less than 30

days, as required in the Federal regulations at 30 CFR 702.11(d).

11 AAC 90.652(g)(1), Administrative Review of an Application for an Incidental Mining Exemption. Alaska proposed to shorten the timeframe for an adversely affected person to request administrative review of an agency decision regarding an incidental mining exemption from 30 days to 20 days. This change is inconsistent with and less effective in providing the opportunity to seek appeal than the counterpart Federal regulation at 30 CFR 702.11(f)(1). The Federal regulation allows for a 30-day period to seek administrative review of such determination according to the Federal or State procedures, whichever are applicable.

11 AAC 90.656, Public Availability of Information. Alaska proposed, in the initial paragraph of 11 AAC 90.656, to require that, except as provided in AS 27.21.100(c), all information submitted to the Alaska Commissioner under 11 AAC 90.652 through 11 AAC 90.669, will be made immediately available for public inspection and copying at the Alaska Commissioner's office and at the regional office of the Department closest to the location of the coal mining operation. Alaska proposed to delete the requirements (previously codified at 11 AAC 90.653(a)) that (1) the information be available for a minimum period of 3 years after expiration of the period during which the subject mining area is active, and (2) the discretion of the Alaska Commissioner to hold information concerning trade secrets or privileged commercial or financial information of the persons intending to conduct the operations, confidential, if requested in writing at the time the application is made. The counterpart Federal requirements to the requirements that Alaska proposed to delete are 30 CFR 702.13(a), (b) and (c).

Alaska's statute at AS 27.21.100(c) specifies requirements concerning confidentiality of information in applications that are similar to and no less effective than the Federal regulations at

30 CFR 702.13(b) and (c). Therefore, Alaska's proposed 11 AAC 90.656, which includes a reference to AS 27.21.100(c) in place of language identical to 30 CFR 702.13(b) and (c), is no less effective than the Federal regulations concerning information that may be held as confidential. However, the counterpart Federal regulation at 30 CFR 702.13(a) requires, except for information approved as confidential, that all information submitted to the regulatory authority must be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active (emphasis added).

Alaska's proposed 11 AAC 90.656 is the same as the counterpart Federal regulation at 30 CFR 702.13(a), with the exception that Alaska proposed to remove the requirement that the information must be available for three years after expiration of operations. OSMRE notes that Alaska's general provisions governing public availability of information at 11 AAC 90.907(j) requires information to be available for at least five years after expiration of the period during which the mining operation is active or is covered by any portion of a reclamation bond, whichever is later. However, operations extracting coal incidental to mining are exempt from these general provisions, if the exemption is approved by the Alaska Commissioner. *See* 11 AAC 90.901(a)(3). Therefore, Alaska's proposed deletion from 11 AAC 90.656 of the requirement that information must be available for three years after expiration of operations is less effective at providing public availability of certain information than the counterpart Federal regulation at 30 CFR 702.13(a).

11 AAC 90.664(c), Administrative Review of a Revocation of an Incidental Mining

Exemption. Alaska proposed to shorten the timeframe for an adversely affected person to request administrative review of an agency decision regarding revocation of an incidental mining exemption from 30 days to 20 days. This change is inconsistent with and less effective in providing the opportunity to seek appeal than the counterpart Federal regulation at 30 CFR 702.17(c)(2). That regulation allows for a 30-day period to seek administrative review of such determination according to the Federal or State procedures, whichever are applicable.

Therefore, based on the above discussion, with three exceptions within 11 AAC 90.652, 11 AAC 656, and 11 AAC 90.664, OSMRE finds that Alaska's proposed rules at 11 AAC 90.652, 654, 656, 658, 660, 662, 664, 666 and 669, concerning the exemption for coal extraction incidental to the extraction of other minerals, are the same as or similar to the counterpart Federal regulations at 30 CFR Part 702, and we approve them.

We find, however, that the proposed reduction of time for an adversely affected person to request administrative review of an agency decision about an application for an incidental mining exemption at 90.652(g)(1) is inconsistent with and less effective than the counterpart Federal regulation at 30 CFR 702.11(f)(1). Therefore, we do not approve it.

Likewise, OSMRE finds that Alaska's proposed deletion from 11 AAC 90.656 of the requirement that information must be available for three years after expiration of operations is less effective than the counterpart Federal regulation at 30 CFR 702.13(a), and we do not approve it.

OSMRE also finds that the proposed reduction of time for an adversely affected person to request administrative review of an agency decision about revocation of an incidental mining exemption at 90.664(c) is inconsistent with and less effective than the counterpart Federal

regulation at 30 CFR 702.17(c)(1). Therefore, OSMRE does not approve it.

Accordingly, OSMRE is adding required amendments, at 30 CFR 902.16, that Alaska further amend 11 AAC 90.652(g)(1) and 90.664(c) to restore the 30-day timeframes for requesting administrative review of agency decisions regarding incidental mining exemptions, and 11 AAC 90.656, concerning public availability of information in an application for an exemption of coal incidental to the extraction of other minerals, to restore the requirement that the information, unless approved as confidential, must be made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active.

10. 11 AAC 90.911(133) and (134), Definitions of “Registered Professional Engineer” and “Registered Professional Land Surveyor”

Alaska proposed, at 11 AAC 90.911(133) and (134), definitions of “registered professional engineer” and “registered professional land surveyor.” OSMRE’s regulations in several locations allow either a “qualified, registered, professional engineer” or a “qualified registered professional land surveyor” to certify certain design plans; however, OSMRE does not define the terms. Alaska defines these terms by reference to the body of law governing registered professionals in the State of Alaska.

Alaska’s proposed inclusion of definitions of “registered professional engineer” and “registered professional land surveyor” serves to clarify its rules where these terms are used. *See* 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; 11 AAC 90.491(f)(1), concerning

preparation and certification of design plans for primary roads; and 11 AAC 90.337(a), concerning inspections of permanent or temporary impoundments. These rules are clarified by the proposed definitions and remain no less effective than the counterpart Federal regulations, which use the same terms (see Federal regulations at 30 CFR 780.37(b), 816.49(a)(3) 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 proposed definitions serve to clarify its program and to demonstrate that Alaska provides for registration of both professional engineers and land surveyors.

Therefore, based on the above discussion, OSMRE approves Alaska's proposed definitions of "registered professional engineer" and "registered professional land surveyor" at 11 AAC 90.911(133) and (134).

D. Revisions to Alaska's Rules or Other Explanations Submitted in Response to Required Amendments Codified at 30 CFR 902.16(a) (See 57 FR 37410, August 19, 1992, Administrative Record No. AK-C-31).

1. 30 CFR 902.16(a)(14), Minimum Stocking and Planting Arrangements for Areas Developed for Fish and Wildlife Habitat, Recreation, Shelter Belts or Forest Products at 11 AAC 90.457(c)(3).

OSMRE required at 30 CFR 902.16(a)(14) that Alaska revise 11 AAC 90.457(c)(3) to require consultation with and approval by the State forestry and wildlife agencies with regard to the minimum stocking and planting arrangements for areas developed for fish and wildlife habitat, recreation, shelter belts or forest products postmining land use as required at 30 CFR 816.116(b)(3)(i) (finding 16, 57 FR 37410, 37416, August 19, 1992).

Alaska proposed revisions of 11 AAC 90.457(c)(3) so that it is now substantively

identical to the counterpart Federal regulations at 30 CFR 816.116(b)(3).

Therefore, OSMRE finds that proposed 11 AAC 90.457(c)(3) is no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), approves it, and removes the required amendment at 30 CFR 902.16(a)(14).

2. 30 CFR 902.16(a)(15), Standards for Revegetation Success

OSMRE required at 30 CFR 902.16(a)(15) that Alaska resubmit standards for revegetation success per the requirements at 30 CFR 816.116(a)(1) (finding 18, 57 FR 37410, 37417, August 19, 1992).

On August 30, 2006, OSMRE revised the Federal regulations at 30 CFR 816.116(a)(1) by eliminating the requirement that revegetation success standards and statistically valid sampling techniques must be included in approved State regulatory programs. *See* 71 FR 51684, 51688. We are therefore removing the required amendment at 30 CFR 902.16(a)(15). The revised current regulation continues to require that standards for success and sampling techniques for measuring success must be selected by the regulatory authority and must be described in writing and made available to the public to ensure that all interested parties can readily find all the options available in their jurisdiction for evaluating revegetation success.

OSMRE approval is still required for any normal husbandry practices that Alaska may elect to include as part of its written revegetation success standards. The September 7, 1988 *Federal Register* notice (53 FR 34641) states that OSMRE “would consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice[,]” and that the regulatory authority “would be expected

to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA].”

The Federal regulations at 30 CFR 816.116(c)(1) for surface mining operations and 817.116(c)(1) for underground mining operations require that the period of extended responsibility for successful revegetation must begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4).

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) require that a regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSMRE that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent vegetation success. Approved practices must be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

State regulatory authorities may only approve the use of specific normal husbandry practices within any permit after receiving prior review and approval for the practice from

OSMRE. Alaska has not proposed any normal husbandry practices for OSMRE review and approval. As such, normal husbandry practices may not currently be incorporated into any coal mining permit in Alaska. If Alaska intends to allow for any normal husbandry practices to be used during the period required for demonstration of revegetation success standards, Alaska must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and otherwise are consistent with and no less effective than 30 CFR 816.116(c)(4) and 30 CFR 817.116(c)(4). Alaska would also have to list, at 11 AAC 90.457(d), the acceptable practices.

Alaska stated in its March 6, 2012, response to OSMRE's January 23, 2012, concern letter, that, due to climatic and environmental differences between different mine sites and proposed mine sites in Alaska, rather than developing state-wide revegetation success standards and sampling techniques, Alaska has approved standards that determine vegetative success and the methods used to quantify the success of revegetation in each individual permit. Alaska stated that the standard is developed from local baseline conditions and is reviewed by both the Alaska Departments of Natural Resources (DNR), Fish and Game (ADFG) and their respective divisions, such as the DNR Division of Agriculture and the ADFG Division of Habitat.

Although it is appropriate for Alaska to review and approve revegetation success standards and sampling techniques in each individual permit, the Federal program, 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1), requires the regulatory authority to first select all standards for success and statistically valid sampling techniques, which are available within the jurisdiction, describe them in writing, and make them publicly available. *See* August 30, 2006, **Federal Register** (71 FR 51684, 51690-91). The manner in which the regulatory authority

selects success standards and sampling techniques that it will allow operators to use in evaluating revegetation success is up to the regulatory authority. It may do so in consultation with operators and/or with assistance from academia. However, selected standards and sampling techniques must meet the requirements of 30 CFR 816.116(a) and (b) and 30 CFR 817(a) and (b), and they must be put in writing and made available to the public. It is from this set of identified success standards and sampling techniques that the operators must choose the specific standards and techniques to include in their individual permit applications.

In accordance with the requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1), OSMRE finds that Alaska must clarify its program to acknowledge the selection of all revegetation success standards and statistically valid sampling techniques available to operators within the state will be put in writing and made available to the public. Therefore, OSMRE is adding a new, required program amendment at 30 CFR 902.16(c)(6) to require that Alaska revise 11 AAC 90.457 to indicate that all available revegetation success standards and sampling techniques approved by the Alaska Commissioner will be put in writing and made publicly available. Additionally, this required amendment will note that if Alaska intends to allow the use of normal husbandry practices to be used during the period required for demonstration of revegetation success, it must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and list, at 11 AAC 90.457(d), the acceptable practices.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Document ID No. OSM-2011-0017-0001), but received none.

Federal Agency Comments

On November 3, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alaska program (Document ID No. OSM-2011-0017-0003).

We received two responses indicating the respective agencies did not have any comments.

On November 18, 2011, the U.S. Bureau of Reclamation responded with an e-mail stating that it had no comments (Document ID No. OSM-2011-0017-0006).

On November 18, 2011, the U.S. Forest Service responded with an e-mail stating that it had no comments (Document ID No. OSM-2011-0017-0008).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Alaska proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from EPA

(Document ID No. OSM-2011-0017-0015). 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 November 3, 2011, we requested comments on Alaska's amendment (Document ID No. OSM-2011-0017-0004). The ACHP did not respond to our request. However, on November 9, 2011, the SHPO responded with a letter stating they had no objections to the amendment (Document ID No. OSM-2011-0017-0007).

V. OSMRE's Decision

Based on the above findings, we are approving, with four exceptions and six additional required amendments, the Alaska amendment that was submitted on September 8, 2011, as revised on March 6, 2012.

The exceptions, which OSMRE does not approve, are that: (1) 11 AAC 90.321(e) excludes water supplies affected by surface coal mining activities conducted on or before October 24, 1992, from water supply replacement requirements, (2) 11 AAC 90.652(g)(1) proposes a reduced timeframe of 20 days to request administrative review of an agency decision regarding an incidental mining exemption, (3) 11 AAC 90.656 does not require that information in an application for an exemption of coal incidental to the extraction of other minerals will be

made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active, and (4) 11 AAC 90.664(c) proposes a reduced timeframe of 20 days to request administrative review of an agency decision to revoke an incidental mining exemption. All revisions proposed by Alaska on September 8, 2011, had been approved through the State's legislative process prior to their submission to OSMRE as a formal program amendment. To ensure Alaska corrects its regulations to accurately reflect the changes that OSMRE is not approving, we are adding three required amendments at 902.16. These requirements will ensure protection of water supplies affected by surface coal mining activities conducted on or before October 24, 1992, restore both 30-day timeframes for requesting administrative review of agency decisions, and ensure information in an application for an exemption of coal incidental to the extraction of other minerals will be made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active.

OSMRE's approval of revisions to 11 AAC 90.101(e) is conditioned upon the State submitting additional language corresponding to 30 CFR 784.20(b)(7). The language, which was omitted from Alaska's current amendment, pertains to subsidence control plan requirements related to minimizing damage to non-commercial buildings and occupied residential dwellings in planned subsidence scenarios. We are placing a new required amendment at 30 CFR 902.16 to reflect this required addition.

OSMRE's approval of revisions to 11 AAC 90.321(e) is conditioned upon the State submitting statutory revisions to AS 27.21.220 that will provide statutory authority to implement the new regulatory language, consistent with the Energy Policy Act of 1992. We are placing a

new required amendment at 30 CFR 902.16 to reflect this required statutory addition.

OSMRE is also removing and reserving the current requirement at 30 CFR 902.16(a)(15). The existing required amendment is no longer necessary due to changes in the Federal program at 30 CFR 816.116(a)(1). Alaska must have revegetation success standards, which are consistent with 30 CFR 816.116(a) and (b); however, the success standards may be in a guideline, which does not need to be approved as a state program amendment. Such standards must be in writing and available to the public. We are, therefore, adding a new required amendment at 30 CFR 902.16(c)(6) to state that Alaska must indicate revegetation success criteria are available to the public in written form. Additionally, Alaska has indicated to OSMRE that it is working to develop a list of normal husbandry practices, which could be employed without restarting the revegetation responsibility period prior to bond release. Because 30 CFR 816.116(c)(4) requires normal husbandry practices to be processed as a state program amendment, we are adding a required amendment at 30 CFR 902.16(c)(6) that, if Alaska will allow for any normal husbandry practices to be used during the period required for demonstration of revegetation success, the State must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and list, at 11 AAC 90.457(d), the acceptable practices.

To implement this decision, we are amending the Federal regulations, at 30 CFR Part 902, that codify decisions concerning the Alaska program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. 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. SMCRA requires

consistency of State and Federal standards.

Effect of OSMRE's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSMRE for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSMRE. In the oversight of the Alaska program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Alaska to enforce only approved provisions.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency reviews its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency writes its legislation and regulations to minimize litigation, and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Alaska drafted.

Executive Order 13132 - Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by Section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Alaska program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Sections 2 and 3 of the Executive Order and with the principles of cooperative federalism, as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). Specifically, pursuant to Section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department’s tribal consultation policy is not required. The basis for this determination is that our decision is on the Alaska program, which does not include

Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking 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 significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), state program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A-119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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 corresponding 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 corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 2019.

David Berry
Regional 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. Add § 902.12 to read as follows:

§ 902.12 Regulatory program and proposed program amendments not approved.

(a) We do not approve the following provisions of the proposed program amendment Alaska submitted on September 8, 2011, as revised on March 6, 2012:

(1) Proposed addition of the phrase “*** conducted on or before October 24, 1992 ***” in 11 AAC 90.321(e)(1).

(2) Proposed reduction of timeframe from 30 to 20 days to request administrative review of an agency decision regarding an incidental mining exemption under 11 AAC 90.652(g)(1),

(3) Proposed deletion of the phrase “***until at least three years after expiration of the period during which the subject mining area is active***” under 11 AAC 90.656.

(4) Proposed reduction of timeframe from 30 to 20 days to request administrative review of

an agency decision to revoke an incidental mining exemption under 11 AAC 90.664(c).

3. Amend § 902.15 by adding an entry to the table 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
<p>* * * * *</p> <p>September 8, 2011, as revised on March 6, 2012</p>	<p>* *</p> <p><u>[Insert date of publication in the Federal Register]</u></p>	<p>11 Alaska Annotated Code (AAC) 90.043(b); 11 AAC 90.045(a), (b), (c), and (d); 11 AAC 90.057(a), (b) and (c); 11 AAC 90.085(a), (a)(5) and (e); 11 AAC 90.089(a)(1); 11 AAC 90.101(a) through (f); 11 AAC 90.173(b)(2); 11 AAC 90.179(a)(3), (a)(4) and (a)(5); 11 AAC 90.185(a) and (a)(4); 11 AAC 90.201(d); 11 AAC 90.211(a); 11 AAC 90.321(d), (e), (f), (f)(1) and (f)(2); 11 AAC 90.323(a), (b) and (c); 11 AAC 90.325(b) and (c); 11 AAC 90.327(b)(2); 11 AAC 90.331(d)(1), (e), and (h)(1) and (2); 11 AAC 90.336(a), (b)(1) and (2), (f), and (g); 11 AAC 90.337(a); 11 AAC 90.345(e); 11 AAC 90.349; 11 AAC 90.375(f) and (g); 11 AAC 90.391(n) and (t); 11 AAC 90.395(a); 11 AAC 90.397(a); 11 AAC 90.401(a)(1), (b), (d),</p>

	<p>(e), and (f); 11 AAC 90.407(c)(1) and (2) and (f); 11 AAC 90.423(h); 11 AAC 90.443(a)(2), (k)(2), (l)(2), and (m)(2); 11 AAC 90.444(a) and (b); 11 AAC 90.447(c)(1); 11 AAC 90.457(c)(3); 11 AAC 90.461; 11 AAC 90.461(b) and (b)(1) through (3) , (g) and (g)(1) through (5), (h) and (h)(1) through (3), (i) and (i)(1) through (3), (j), (k), and (l)(1) through (3); 11 AAC 90.491(f)(1), (f)(2)(E), (f)(2)(E),(f)(3), (f)(4), and (f)(2)(E) and (E)(iii); 11 AAC 90.601(h), (i) and (j); 11 AAC 90.629(a); 11 AAC 90.631(a); 11 AAC 90.635(a) and (b); 11 AAC 90.639(a), (b), and (c); 11 AAC 90.641(a), (b), (c), and (d); 11 AAC 90.652 through 11 AAC 90.669; 11 AAC 90.701(a), (b), and (c); 11 AAC 90.901(a); and 11 AAC 90.911(125), (126), (128), (129), (130), (133), (134) and (135).</p>
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4. Amend § 902.16 by removing and reserving paragraphs (a)(14) and (15) and by adding paragraph (c).

The additions read as follows:

§ 902.16 Required program amendments.

* * * * *

(c) By [Insert date 60 days after date of publication in the Federal Register], Alaska must amend its program as follows:

(1) At 11 AAC 90.101(e), in accordance with the requirements at 30 CFR 784.20(b)(7), Alaska must submit a program amendment (or description of the amendment with a timetable for

submission) to adopt subsidence control plan requirements at 11 AAC 90.101(e) for planned subsidence scenarios. Such plans must describe the methods to be employed to minimize damage to non-commercial buildings and occupied residential dwellings and related structures or written consent from the owner of the structure or facility that minimization measures not be taken, or unless the damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed anticipated costs of repair.

(2) At 11 AAC 90.321(e)(1), in accordance with 30 CFR 816.41(h), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to revise 11 AAC 90.321(e)(1) to ensure protection of water supplies affected by surface coal mining activities conducted on or before October 24, 1992.

(3) At 11 AAC 90.652(g)(1) and 11 AAC 90.664(c), in accordance with the requirements at 30 CFR 702.11(f)(1) and 702.17(c)(2), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to restore the 30-day time frames under 11 AAC 90.652(g)(1) and 11 AAC 90.664(c) for an adversely affected person to request administrative review of the agency's decisions regarding incidental mining exemptions.

(4) At 11 AAC 90.656, in accordance with the requirements at 30 CFR 702.13(a), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to revise 11 AAC 90.656, concerning public availability of information in an application for an exemption of coal incidental to the extraction of other minerals. The amendment or its description must include the requirement that the information, unless approved as confidential, will be made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active.

(5) At AS 27.21.220, in accordance with the October 24, 1992, Energy Policy Act, Alaska must submit a statutory revision requiring prompt repair or compensation for material damage resulting from subsidence, and prompt replacement of water supplies affected by underground mining operations.

(6) At 11 AAC 90.457(d), in accordance with the requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to clarify its program by revising 11 AAC 90.457 to indicate that all selected revegetation success standards and sampling techniques which may be incorporated into individual permits will be put in writing and made available to the public. If Alaska will allow for any normal husbandry practices to be used during the period required for demonstration of revegetation success, in accordance with 30 CFR 816.116(c)(4), Alaska must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and list, at 11 AAC 90.457(d), the acceptable practices.

[FR Doc. 2019-26128 Filed: 12/3/2019 8:45 am; Publication Date: 12/4/2019]