

Dated: September 9, 1996.

Lucy R. Querques,  
Acting Associate Director for Offshore  
Minerals Management.  
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## Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 902

[AK-004-FOR; Alaska Amendment IV]

#### Alaska Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.  
**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, a proposed amendment to the Alaska regulatory program (hereinafter referred to as the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alaska proposed revisions to and additions of rules pertaining to fees for services, general permitting requirements, general permit application information requirements, environmental resource information requirements, reclamation and operation plan requirements, processing of permit applications, permitting for special categories of mining, exploration, the small operator assistance program, bonding, performance standards, inspection and enforcement, and general provisions. The amendment revised the Alaska program to be consistent with the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

**EFFECTIVE DATE:** September 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Telephone: (303) 672-5524.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior conditionally approved the Alaska program. General background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program can be found in the March 23, 1983, Federal Register (48 FR 12274). Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15 and 902.16.

##### II. Proposed Amendment

By letter dated January 26, 1995, and FAX transmittals dated February 13 and 14, 1995, Alaska submitted a proposed amendment (Amendment IV, administrative record No. AK-E-01) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Alaska submitted the proposed amendment at its own initiative and in response to (1) letters dated November 1, 1989, and February 7, 1990 (administrative record Nos. AK-60-05 and AK-60-06), that OSM sent to Alaska in accordance with 30 CFR 732.17(c), and (2) required program amendments at 30 CFR Part 902.16(a)(1), (2), (3), (6) through (14), and (16).

The provisions of the Alaska Administrative Code (AAC) that Alaska proposed to revise, repeal, and add were: 11 AAC 05.010(a)(9)(D), fees for incidental boundary revisions; 11 AAC 90.002, responsibilities; 11 AAC 90.003, continued operation under interim permits; 11 AAC 90.011, permit fees; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.025, authority to enter and ownership information; 11 AAC 90.045(a), geology description; 11 AAC 90.049(2), surface water information; 11 AAC 90.083(b), reclamation plan general requirements; 11 AAC 90.097, transportation facilities; 11 AAC 90.099, return of coal mine waste to abandoned underground workings; 11 AAC 90.117, administrative processing of permit applications; 11 AAC 90.125, Commissioner's [of Natural Resources] findings; 11 AAC 90.126, impropvidently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149(d), operations near alluvial valley floors; 11 AAC 90.163, exploration that substantially disturbs the natural land surface or occurs in areas designated unsuitable for mining; 11 AAC 90.173(b), eligibility for small operator assistance; 11 AAC 90.207(f), self-bonding provisions; 11 AAC 90.321(d), hydrologic balance; 11 AAC 90.323(a), water quality standards; 11 AAC 90.325(a), diversions and conveyance of flows; 11 AAC 90.327 (b) and (c), stream channel diversions; 11 AAC 90.336(b), impoundment design and construction; 11 AAC 90.337(f), impoundment inspection; 11 AAC 90.341(b), underground mine entry and access discharges; 11 AAC 90.345(e), surface and ground water monitoring; 11 AAC 90.375(f), public notice of blasting; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.401(e), coal mine waste, refuse piles; 11 AAC 90.407(e), coal mine waste,

dams and embankments; 11 AAC 90.409, return of coal mine waste to underground workings; 11 AAC 90.423(b), protection of fish and wildlife; 11 AAC 90.443 (d) and (k), backfilling and grading; 11 AAC 90.457 (c) and (d), standards for revegetation success; 11 AAC 90.491, construction and maintenance of roads, transportation and support facilities, and utility installations; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation orders; 11 AAC 90.901, applicability; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions. Additionally, Alaska proposed several minor editorial revisions.

OSM announced receipt of the proposed amendment in the February 27, 1995, Federal Register (60 FR 10520), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. AK-E-05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 29, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of the Alaska Administrative Code at 11 AAC 05.010(a)(9)(D) and 11 AAC 90.011, fees; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.117, administrative processing of permit applications; 11 AAC 90.125, Commissioner's findings; 11 AAC 90.126, impropvidently issued permits; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149(d), operations near alluvial valley floors; 11 AAC 90.173, eligibility for small operator assistance; 11 AAC 90.207(f), self-bonding provisions; 11 AAC 90.327, stream channel diversions; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.409, return of materials to underground workings; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90.457, revegetation success standards; 11 AAC 90.491, construction and maintenance of roads, transportation and support facilities, and utility installations; 11 AAC 90.601, inspections; 11 AAC 90.901, applicability; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions. OSM notified Alaska of the concerns by letter

dated July 19, 1995 (administrative record No. AK-E-12).

Alaska responded in letters dated October 11 and 24, 1995, and by a FAX transmittal dated October 23, 1995, by submitting a revised amendment and additional explanatory information and withdrawing certain provisions (administrative record No. AK-E-14). Alaska proposed revisions to and additional explanatory information for: 11 AAC 05.010(a)(9)(D) and 11 AAC 90.011, fees; 11 AAC 90.045(a), geology description; 11 AAC 90.099, return of coal mine waste and excess spoil to abandoned underground workings; 11 AAC 90.149(d), operations near alluvial valley floors; 11 AAC 90.163, exploration that occurs in an area designated unsuitable for surface coal mining; 11 AAC 90.207, self-bonding provisions; 11 AAC 90.327, stream channel diversions; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.409, coal mine waste, return to underground workings; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90491, construction and maintenance of roads, transportation and support facilities, and utility installations; 11 AAC 90.901, applicability; and 11 AAC 90907, public participation.

In addition, Alaska withdrew proposed revisions and additions at: 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.117, administrative processing of permit applications; 11 AAC 90.125, Commissioner's findings; 11 AAC 90.126, imprudently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.457, revegetation success standards; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation order; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; and 11 AAC 90.911, definitions.

Based upon the revisions to and additional explanatory information for the proposed amendment submitted by Alaska and the withdrawal of certain proposed provisions, OSM reopened the public comment period in the November 9, 1995, Federal Register (60 FR 56547; administrative record No. AK-E-21). The public comment period ended on November 24, 1995.

### III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements,

that the proposed program amendment submitted by Alaska on January 26 and February 13 and 14, 1995, and as revised by it and supplemented with additional explanatory information on October 11, 23, and 24, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

#### 1. *Nonsubstantive Revisions to Alaska's Rules*

Alaska proposed revisions to the following previously-approved rules that are non substantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding Federal regulation provisions are listed in parentheses):

- 11 AAC 90.025(b) and (c) (30 CFR 778.15(a) and (b)), right of entry information,
- 11 AAC 90.049(2) and (2)(E) through (H) (30 CFR 780.21(b)(2) and 784.14(b)(2)), surface water information,
- 11 AAC 90.083(b)(10) and (11) (30 CFR 780.27, 780.37(a)(4), and 784.24(a)(4)), reclamation plan general requirements,
- 11 AAC 90.149(d) (30 CFR 785.19(b)(2)), operations near alluvial valley floors,
- 11 AAC 90.163(b), (c), and (c)(3)(B) (30 CFR 772.14(b)(1), and (b)(2)(i)), exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining,
- 11 AAC 90.391(b) (30 CFR 816.71(b) and 817.71(b)), disposal of excess spoil or coal mine waste,
- 11 AAC 90.401(e) (30 CFR 816.83(c)(4) and 817.83(c)(4)), coal mine waste refuse piles,
- 11 AAC 90.491(a), (a)(7), (c)(4), and (c)(8) (30 CFR 816.150(b), (b)(4), (f)(4), and (f)(6) and 817.150(b), (b)(4), (f)(4), and (f)(6)), construction and maintenance of roads, transportation and support facilities, and utility installations, and
- 11 AAC 90.907(e), (f), (g), (h), and (j) (30 CFR 740.13(c), 772.12(c), 773.13, 774.17(c), 785.13(h), 800.40, and 840.15), public participation.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed Alaska rules are no less effective than the Federal regulations. The Director approves these proposed rules.

#### 2. *Substantive Revisions to Alaska's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

Alaska proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses):

- 11 AAC 05.010(a)(11)(D) and 11 AAC 90.011 (30 CFR 777.17), permit fees,

- 11 AAC 90.002 (30 CFR Part 772 and 773.11), responsibilities under general permitting requirements,
- 11 AAC 90.025(a) (30 CFR 778.13(e) and (f)), authority to enter and ownership information,
- 11 AAC 90.045(a) (30 CFR 780.22(b)(1) and 784.22(b)(1)), geology description,
- 11 AAC 90.049(2)(D) (30 CFR 780.21(b)(2) and 784.14(b)(1)), surface water information,
- 11 AAC 90.083(b)(12) (30 CFR 780.37(a)(6) and 784.24(a)(6)), reclamation plan general requirements,
- 11 AAC 90.097 (30 CFR 780.37(a)(1), (3), and (5) and 784.24(a)(1), (3), and (5)), transportation facilities,
- 11 AAC 90.149(d)(1) (30 CFR 785.19(d)(2)(1)), operations near alluvial valley floors,
- 11 AAC 90.163, (a), (b)(1), (c)(4), and (c)(5) (30 CFR 772.12(a) and 772.14(b), (b)(1), (3), and (4)), exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining,
- 11 AAC 90.207(f)(1), (2), and (4) through (7) (30 CFR 800.16(e)(2) and 800.23(b), (c)(1), and (d) through (g)), requirements for self-bonding,
- 11 AAC 90.375 (30 CFR 816.64(b) and 817.64(b)), public notice of blasting,
- 11 AAC 90.391 (h) and (s) (30 CFR 816.71 (g) and (i) and 817.71 (g) and (i)), disposal of excess spoil or coal mine waste,
- 11 AAC 90.407(e) (30 CFR 816.84(b)(2) and 817.84(b)(2)), coal mine waste, dams and embankments,
- 11 AAC 90.409 (30 CFR 816.71(j), 817.71(j), 816.81(f), and 817.81(f)), return to underground workings,
- 11 AAC 90.423(b) and (h) (30 CFR 780.16(c), 784.21(c), 816.97(b), and 817.91(b)), protection of fish and wildlife,
- 11 AAC 90.443(d)(1) (30 CFR 816.106(b)(1) and 817.106(b)(1)), backfilling and grading of previously mined areas,
- 11 AAC 90.491(a)(1), (6), and (8), (c) (5) through (7), and (e) (30 CFR 816.150(b)(1), (3), (7), (d), and (f) (3) and (6); 816.181(b) (1) and (2)(ii), 817.150(b)(1), (3), and (7), (d), and (f) (3) and (6); and 817.181(b) (1) and (2)(ii)), construction and maintenance of roads, transportation and support facilities, and utility installations,
- 11 AAC 90.901(e) (30 CFR 700.11(d)(1)(ii)), applicability, and
- 11 AAC 90.907 (c) and (d) (30 CFR 840.14 (b) and (c)(2)), public participation.

Because these proposed Alaska rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

#### 3. *11 AAC 90.003. Continued Operation Under Interim Permits*

Alaska proposed to repeal 11 AAC 90.003, which provides that a person operation under a permit issued or amended by the Commissioner in accordance with section 502 of SMCRA

may conduct operations more than eight months after approval of the Alaska program if certain criteria are met. 11 AAC 90.003 is substantively the same as the counterpart Federal regulations at 30 CFR 773.11(b)(2), which provide for continuation of initial program operations when certain conditions are met. Alaska has informed OSM that there are no interim permits within the State. Therefore, the Director finds that 11 AAC 90.003 is no longer applicable in Alaska's program. The Director approves the repeal of this rule.

**4. 11 AAC 90.099, Return of Coal Mine Waste and Excess Spoil to Abandoned Underground Workings**

Alaska proposed to revise 11 AAC 90.099 to require that the underground mining plan must describe the design, operation, and maintenance of any proposed facility to return coal mine waste and excess spoil to underground workings, including flow diagrams and other drawing and maps required by the Commissioner, and that the permit application also include any plans required to be submitted to the Federal Mine Safety and Health Administration (MSHA) under 30 CFR 817.81(f). The Federal regulations at 30 CFR 784.25(a) provide, in pertinent part, that each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, for the approval of the regulatory authority and MSHA under 30 CFR 817.81(f). The performance standards at reference 30 CFR 817.81(f) and those concerning excess spoil at 30 CFR 817.71(j) allow for the disposal of coal mine waste and excess spoil in underground mine workings in accordance with a plan approved by the regulatory authority and MSHA under 30 CFR 784.25. Despite the fact that the plan requirements at 30 CFR 784.25 do not specifically provide for the underground disposal of excess spoil, the reference to 30 CFR 784.24 in the performance standard at 30 CFR 817.71(j), which provides that excess spoil may be disposed of in underground workings, clearly does provide for such disposal. Therefore, the Director finds that the proposed revision by Alaska at 11 AAC 90.099 is no less effective than the Federal regulations at 30 CFR 784.25(a), 817.81(f) and 817.71(j). The Director approves the revisions to this rule.

**5. 11 AAC 90.163(C) (4) and (5), Exploration That Substantially Disturbs the Natural Land Surface or Occurs in an Area Designated Unsuitable for Surface Coal Mining**

Alaska proposed the addition of new provisions at 11 AAC 90.163(c) (4) and

(5) to require that the demonstration that coal testing is necessary for the development of a surface coal mining and reclamation operation must also include evidence that sufficient reserves of coal are available to the applicant for future commercial use or sale and an explanation of why other mean of exploration are not adequate. Proposed 11 AAC 90.163(c) (4) and (5) are substantively the same as the counterpart Federal regulations at 30 CFR 772.14(b) (3) and (4). They are also identical to existing 11 AAC 90.163(d) (1) and (2). It is not clear to OSM why Alaska choose to add 11 AAC 90.163(c) (4) & (5) to its rules when the same requirements already existed at 11 AAC 90.163(d) (1) and (2). The Director finds that the addition of the provisions at 11 AAC 90.163(c) (4) and (5) is superfluous; however, the addition of these provisions does not render Alaska's rule less effective than the counterpart Federal regulations at 30 CFR 772.14(b) (3) and (4). Therefore, the Director approves the addition of these rules.

**6. 11 AAC 90.207(f), Requirements for Self-Bonding**

Alaska proposed new rules at 11 AAC 90.207(f) to provide specific requirements for self-bonding. With the exceptions discussed below, the proposed 11 AAC 90.207(f) is substantively similar to the requirements of the counterpart Federal regulations at 30 CFR 800.23. Therefore, the Director finds proposed 11 AAC 90.207(f) to be no less effective than the Federal regulations and approves it.

a. 11 AAC 90.207(f), Definitions of "self-bond" and other terms concerning financial statements.—Alaska's rules at 11 AAC 90.207 do not define "self-bond," which is an allowable form of bond under the Federal regulations at 30 CFR 800.23. The term "self-bond" as defined at 30 CFR 800.5(c) means "an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority with or without a separate surety."

OSM, in its July 19, 1995, issue letter, notified Alaska of the lack of a counterpart definition in its rules (issue No. 9). Alaska's response, dated October 11 and 24, 1995, provided that the term "self-bond" was defined at Alaska Statute (AS) 27.21.160(d). AS 27.21.160(d) is Alaska's statutory counterpart to section 509(c) of SMCRA, which provides the conditions under which the regulatory authority may accept a self-bond. Neither the Alaska statute nor the cited section of SMCRA

define "self-bond." Therefore, the Director finds that the lack of a definition of "self-bond" at 11 AAC 90.207(f) is less effective than the Federal regulations and is requiring Alaska to add a definition of "self-bond" to its rules or otherwise revise its program to define "self-bond" consistent with the Federal regulations at 30 CFR 800.5(c).

In addition, Alaska's proposed rules at 11 AAC 90.207(f) do not include definitions for financial statement terms associated with self-bonding such as "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," and "tangible net worth." The Federal regulations at 30 CFR 800.23(a) provide definitions for financial statement terms because they are terms used in the provisions concerning self-bonding to clarify what is meant or required by the self-bonding financial tests. The terms are defined to avoid misunderstandings about what an applicant can and cannot include in its self-bonding application. This is necessary because not all financial term definitions are consistent with standard accounting definitions. For example, "fixed assets," as defined for self-bonding, does not allow land and coal in place to be counted as fixed assets because they are difficult to evaluate and to liquidate. Standard accounting principles, on the other hand, allow land and coal in place to be counted as an asset when calculating total assets.

Therefore, the Director finds 11 AAC 90.207(f) to be less effective than the counterpart Federal regulations at 30 CFR 800.23(a) to the extent that the Alaska rule does not define the financial statement terms used specifically for self-bonding. The Director requires Alaska to provide financial statement definitions that are similar to the definitions provided in the Federal regulations or otherwise revise its program to be consistent with and no less effective than the Federal regulations at 30 CFR 800.23(a)

b. 11 AAC 90.207(f)(3), Agent for service.—The rules proposed by Alaska at 11 AAC 90.207(f)(3) provide requirements for acceptance of a corporate guarantee of an applicant's self-bond, including requirements concerning business history, submission of financial statements, and an agent for service of process in Alaska. These requirements are consistent with the Federal regulations at 30 CFR 800.23(c)(2), except that the Federal regulations contain an additional requirement concerning an agent for service for the applicant. The Director finds, to the extent that 11 AAC 90.207(f)(3) does not require an applicant whose self-bond is

guaranteed by a corporate guarantor to maintain its own agent for service of process in Alaska, that Alaska's rule is less effective than the counterpart Federal regulations at 30 CFR 800.23(c)(2). The Director requires Alaska to amend its rule to require an applicant for a self-bond to meet the requirements of 11 AAC 90.207(f)(1) (A), (C), and (D), otherwise revise its program to require the permittee to maintain an agent for service of process while its self-bond is guaranteed by a corporate guarantor.

#### 7. 11 AAC 90.321(d), *Hydrologic Balance*

Alaska proposed at 11 AAC 90.321(d) to require that the Commissioner will, in the Commissioner's discretion, require operation of necessary "siltation structures," rather than water treatment facilities, for as long as treatment is required. The counterpart Federal regulations at 30 CFR 816.41 (a) and (d) provide, in pertinent part, that the regulatory authority may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented and that if drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate, the operator shall use and maintain the necessary water-treatment facilities or water quality controls. Further, the Federal regulations at 30 CFR 701.5 define "siltation structure" to mean "a sedimentation pond, a series of sedimentation ponds, or other treatment facility." Alaska has no counterpart definition for "siltation structure." Because Alaska's rule lacks the requirement that the operator maintain and use necessary water-treatment facilities, not just siltation structures, the Director finds 11 AAC 90.321(d) to be less effective than the Federal regulations at 30 CFR 816.41 (a) and (d) and 817.41 (a) and (d). The Director does not approve 11 AAC 90.321(d) and requires Alaska to revise it by ensuring that water treatment facilities will be operated for as long as necessary or by adding a definition of "siltation structure" to its rules that is no less effective than the Federal definition of this term at 30 CFR 701.5.

#### 8. 11 AAC 90.323(a), *Water Quality Standards*

Alaska proposed nonsubstantive editorial changes at 11 AAC 90.323(a), which are approved by the Director (see finding No. 1); however, existing language contained in this provision

provides that discharges from underground workings to surface water and surface drainage from the disturbed area must pass through one or more "siltation structures." As discussed in finding No. 7 above, the Director finds use of the term "siltation structure" to be less effective than the Federal regulations at 30 CFR 816.41 (a) and (d) and 817.41 (a) and (d). The Director requires Alaska to revise 11 AAC 90.323 (a) to replace "siltation structures" with "sedimentation ponds or a treatment facility," or otherwise amend its regulatory program to provide a definition of "siltation structures" that is no less effective than the Federal definition of this term at 30 CFR 701.5.

#### 9. 11 AAC 90.325(a), *Diversions and Conveyance of Flow*

Alaska proposed at 11 AACV 90.325(a) to require that all diversions and collection drains that are used to transport water into "siltation structures," rather than "treatment facilities," must meet the requirements of this section for diversions and conveyance of flow. The counterpart Federal regulations at 30 CFR 816.43(a) and (c)(2) and 817.43(a) and (c)(2) provide, in pertinent part, that all diversions shall be designed to minimize the adverse impacts to the hydrologic balance, which includes, as provided at 30 CFR 816.41(d)(1) and 817.41(d)(1), the use and maintenance of necessary water-treatment facilities or water quality controls if drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation or remedial practices are not adequate to meet the hydrologic-balance protection requirements and the water quality standards and effluent limitations. Therefore, because Alaska's rule uses the term "siltation structure," which is not defined in the Alaska program, and because the rule lacks the requirement that the operator maintain and use necessary water-treatment facilities, not just siltation structures, the Director finds 11 AAC 90.325(a) to be less effective than the Federal regulations at 30 CFR 816.41(d)(1) and 817.41(d)(1), and does not approve the replacement of "treatment facilities" with "siltation structures." The Director requires Alaska to revise 11 AAC 90.325(a) by ensuring that water treatment facilities will be operated for as long as necessary or by adding a definition of "siltation structure" to its rules that is no less effective than the Federal definition of this term at 30 CFR 701.5.

#### 10. 11 AAC 90.327(b)(1) and (c), *Stream Channel Diversions*

Alaska proposed at 11 AAC 90.327 (b)(1) and (c) to replace "erosion control structures" and "water treatment facilities" with the term "siltation structures." The Director finds such replacement to be less effective than the counterpart Federal regulations at 30 CFR 816.43 (a)(1) and (3) and 817.43 (a)(1) and (3) for the reasons discussed below.

a. 11 AAC 90.327(b)(2), *Design and Construction of stream channel diversions*.—Alaska proposed at 11 AAC 90.327(b)(1) to require that "siltation structures" rather than "erosion control structures" must be approved by the Commissioner and should be used only if necessary to control erosion.

In the context of describing Federal performance standards for stream channel diversions, "erosion control structures" and "siltation structures" are different kinds of structures and not inter-changeable. The preamble for the Federal regulations at 30 CFR 816.44(b)(1) (44 FR 15399, March 13, 1979) stated that "erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the regulatory authority as being necessary to control erosion." Because the Alaska program lacks a definition for "siltation structures," it is not known whether "siltation structures," as used here, would include structures such as channel linings, gabions, or retention basins. Therefore, the Director does not approve at proposed 11 AAC 90.327(b)(1) the replacement of the term "erosion control structures" with "siltation structures," and requires Alaska to continue to use "erosion control structures" when describing standards for stream channel diversions used to control erosion.

b. 11 AAC 90.327(c), *Removal of temporary stream channel diversions*.—Alaska proposed at 11 AAC 90.327(c) to require that downstream "siltation structures," rather than "water treatment facilities," previously protected by the diversion, must be modified or removed at the time diversions are removed to prevent overtopping or failure of the facilities, and that this requirement does not relieve the operator from maintenance of a "siltation structure," rather than a "water treatment facility," otherwise required under this chapter or the permit. The counterpart Federal regulations at 30 CFR 816.43(a)(3) and

817.43(a)(3) require, in pertinent part, that downstream water-treatment facilities previously protected by a diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities, and that this requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. Because Alaska has not defined "siltation structures," the Director finds that replacement of "water treatment facilities" or water treatment facility" with "siltation structures" or "siltation structure" is less effective than 30 CFR 816.43(a)(3) and 817.43(a)(3). The Director is not approving proposed 11 AAC 90.327(c) and is requiring Alaska to revise it by retaining the terms "water treatment facilities" and "water treatment facility," or to provide a definition of "siltation structures" that includes "water-treatment facilities."

**11. 11 AAC 90.337(f), Impoundment Inspection**

Alaska proposed at 11 AAC 90.337(f) to require that in addition to the formal inspections required under 11 AAC 90.337(a) through (e), all impoundments must be examined at least once a quarter by a qualified person for any appearances of structural weakness or other hazardous conditions. The Federal regulations at 30 CFR 816.49(a)(12) and 817.49(a)(12) require, in pertinent part, that impoundments not meeting the SCS (Soil Conservation Service, now Natural Resources Conservation Service) class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216-3, shall be examined at least quarterly. The Director finds 11 AAC 90.337(f), which requires that *all* impoundments must be examined at least quarterly, is no less effective than the Federal regulations and approves the revisions to this rule.

**12. 11 AAC 90.341(b)(2), Underground Mine Entry and Access Discharges**

Alaska proposed at 11 AAC 90.341(b)(2) to replace "treatment facility" with "siltation structure," and allow gravity discharge of water from an underground mine if all water discharged, whether treated or not, meets applicable State and Federal laws and regulations, and the Commissioner finds that consistent maintenance of any siltation structure required under 11 AAC 90.323 will occur throughout the anticipated period of gravity discharge. The Federal regulations at 30 CFR 817.41(i)(1) require, in pertinent part, that gravity discharges of water from underground mines may be allowed by the regulatory authority if it is demonstrated that the untreated or

treated discharge complies with the performance standards of this part. This part includes the provisions at 817.41(d)(1), concerning protection of the hydrologic balance and monitoring, 817.42, concerning water quality standards, and 817.46(b)(5), concerning maintenance of siltation structures until removal is authorized by the regulatory authority. As discussed in previous findings, because Alaska has not defined "siltation structures," the Director finds that use of the term "siltation structures" is less effective than the Federal regulations at 30 CFR 817.46(b)(5). The Director does not approve proposed 11 AAC 90.341(b)(2) and requires Alaska to revise it to provide for consistent maintenance of any treatment facility used during the anticipated period of gravity discharge, or otherwise revise its regulatory program to ensure that "siltation structure" is defined in accordance with 30 CFR 701.5.

**13. 11 AAC 90.345(e), Surface and Ground Water Monitoring**

Alaska proposed at 11 AAC 90.345(e), concerning the monitoring of stream, lake, and other surface water bodies that may be affected by the mining operation or that will receive a discharge, to require that the monitoring must be conducted at both upstream and downstream locations in all receiving water bodies. The Federal regulations concerning ground-water and surface-water monitoring at 30 CFR 816.41(c) and (e) and 817.41(c) and (e) require that monitoring shall be conducted according to the ground-water monitoring plan and surface-water monitoring plan approved under 30 CFR 780.21(i) and (j) for surface mining activities and 30 CFR 784.14(h) and (i) for underground mining activities, and that the regulatory authority may require additional monitoring when necessary. There is no specific Federal regulatory counterpart to Alaska's proposed rule at 11 AAC 90.345(e), which requires both upstream and downstream monitoring locations. However, the proposed requirement is not inconsistent with the Federal regulations. Therefore, the Director finds that proposed 11 AAC 90.345(e) is no less effective than 30 CFR 816.41(c) and (e) and 817.41(c) and (e), which provide, in addition to conducting monitoring in accordance with the approved monitoring plan, that the regulatory authority may require additional monitoring when necessary. The Director approves the proposed revisions to this rule.

**14. 11 AAC 90.443(k), Backfilling and Grading**

Alaska proposed new language at 11 AAC 90.443(k) to provide that spoil shall be returned to the mined-out area, except for (1) excess spoil disposed of in accordance with 11 AAC 90.391, and (2) spoil necessary to blend regraded areas into the surrounding terrain in non-steep slope areas so long as all vegetative and organic material is removed. The counterpart Federal regulations at 30 CFR 816.102(b) provide that spoil, except excess spoil disposed of in accordance with 30 CFR 816.71 through 816.74, shall be returned to the mined-out area. In addition, 30 CFR 816.102(d) (1) through (3) provide that spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if certain requirements are met, including removal of all vegetative and organic material, removal, segregation, storage and redistribution of topsoil, and backfilling and grading of the spoil in accordance with the requirements of 30 CFR 816.102.

Alaska's proposed rule at 11 AAC 90.443(k) is similar to the Federal regulations at 30 CFR 816.102 (b) and (d), except that Alaska's rule does not require that (1) the topsoil on the area outside the mined-out area in nonsteep slope areas be removed, segregated, stored, and redistributed in accordance with Alaska's counterpart to the cited Federal regulation at 30 CFR 816.22, and (2) the spoil to be placed on the area outside the mined-out area in nonsteep slope areas be backfilled and graded in accordance with the requirements of Alaska's counterpart to the cited Federal regulation at 30 CFR 816.102. Therefore, the Director finds, to the extent that Alaska's rule at 11 AAC 90.443(k) lacks the counterpart requirements of the Federal regulations at 30 CFR 816.102(d) (2) and (3), 11 AAC 90.443(k) to be less effective than the Federal regulations. The Director approves proposed 11 AAC 90.443(k), but requires Alaska to revise it to provide 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 otherwise amend its program 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).

### 15. 11 AAC 90.491(f) Construction and Maintenance of Roads

Alaska proposed at 11 AAC 90.491(f) that any road used to transport coal or spoil, frequently used in excess of six months for access or other purposes, or retained for an approved postmining land use, must meet several additional requirements, including certification, safety factor, location, drainage control, and surfacing. Proposed 11 AAC 90.491(f) is substantively the same as the counterpart Federal regulations at 30 CFR 816.150(b) and 817.150(b) and 816.151 (a) through (c), (d) (1) through (4), and (e) and 817.151 (a) through (c), (d) (1) through (4), and (e). However, proposed 11 AAC 90.491(f) lacks provisions that are required by the Federal regulations at 30 CFR 816.151(c)(2), (d)(5), and (d)(6) and 817.151(c)(2), (d)(5) and (d)(6), concerning fords of perennial or intermittent streams, the alteration or relocation of natural stream channels, and structures for perennial or intermittent stream channel crossings. Alaska proposed new language at 11 AAC 90.097 concerning reclamation plan general requirements for transportation facilities, to require that the surface coal mining application contain the specifications for each low water crossing and temporary stream ford (see finding No. 2), but Alaska did not include all the necessary performance standards concerning location and drainage control. With the exception of the lack of necessary provisions discussed above, the Director finds that proposed 11 AAC 90.491(f) is no less effective than the Federal regulations at 30 CFR 816.151 and 817.151 and approves it. The Director is, however, requiring Alaska to revise 11 AAC 90.491(f) to ensure that its performance standards for primary roads include requirements concerning fords, alteration or relocation of natural stream channels, and stream crossings, or otherwise revise its program to provide counterpart provisions to the Federal regulations at 30 CFR 816.151(c)(2), (d)(5), and (d)(6) and 817.151(c)(2), (d)(5), and (d)(6).

### IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

#### 1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

### 2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Alaska program (administrative record Nos. AK-E-2 and AK-E-16).

U.S. Bureau of Reclamation (BOR).—By letter dated March 15, 1995, the BOR Washington, D.C. office responded that it does not have jurisdiction in the Alaska area (administrative record No. AK-E-6). OSM has, therefore, removed the BOR Washington, D.C. office from the mailing list soliciting comments on Alaska amendments.

Bureau of Land Management (BLM).—By letters dated March 17 and November 9, 1995, the BLM Alaska State Office responded that the amendment created no potential conflicts with the management criteria of the BLM surface management program in Alaska concerning mineral development. Therefore, BLM had no comments on the proposed amendment (administrative record Nos. AK-E-7 and AK-E-19).

U.S. Bureau of Mines (BOM).—The BOM Washington, D.C. office responded on March 17 and November 2, 1995, that it had no comments (administrative record Nos. AK-E-8 and AK-E-18). In addition, the BOM Alaska Field Operations Center responded on March 27, 1995, that it had no comments on the proposed revisions (administrative record No. AK-E-11).

U.S. Fish and Wildlife Service (FWS).—FWS responded on March 22, 1995, that it was not able to thoroughly review the proposed changes to Alaska's rules due to staffing and funding constraints, and therefore, it had no specific comments (administrative record No. AK-E-9).

U.S. Department of Energy (DOE).—By letters dated March 21 and November 1, 1995, the DOE Alaska Power Administration responded on that it had no comments (administrative record Nos. AK-E-10 and AK-E-17).

Natural Resources Conservation Service (NRCS).—NRCS responded on December 5, 1995, with comments on the proposed amendment (administrative record No. AK-E-20).

NRCS commented that the "history of farming" at 11 AAC 90.149(d) should be expanded to include "or potential for farming." NRCS stated that many alluvial valley floors have soil and climate characteristics suitable for agriculture and that even though the total existing acres in production in Alaska are limited due to market conditions, that should not preclude

maintaining hydrologic functions on areas with agriculture potential. NRCS suggested that these areas can be identified using existing Department of Natural Resources guidelines for identifying lands with agricultural potential.

Alaska's rule at 11 AAC 90.149(d) provides, in pertinent part, that certain information must be included in the permit application if the proposed operation may affect an alluvial valley floor, unless the Commissioner determines that some or all of the information is unnecessary because the particular valley floor has no history of farming, is not subirrigated, or has no deficiency of water. The counterpart Federal regulations at 30 CFR 785.19(b)(2) and (d)(1) provide, in pertinent part, for statutory exclusions concerning alluvial valley floors, including determinations by the State regulatory authority that (1) the premining land use is undeveloped rangeland which is not significant to farming or (2) any farming on the alluvial valley floor that would be affected by the surface coal mining operation is of such small acreage as to be of negligible impact on the farm's agricultural production. Farm, as used in these Federal regulations, is one or more land units on which farming is conducted and a farm is considered to be the combination of land units with acreage and boundaries in existence prior to enactment of SMCRA, or if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity.

The Federal regulations do not specifically address "history of farming" or "potential for farming." However, OSM has determined that Alaska's rule at 11 AAC 90.149(d) is no less effective than the Federal regulations at 30 CFR 785.19(d)(2) (see finding No. 1). OSM interprets the phrase "history of farming" to be consistent with the exceptions provided at 30 CFR 785.19(b)(2) in that the Federal regulations require the regulatory authority to determine the presence or absence of an alluvial valley floor, and if an alluvial valley floor is present, then the regulatory authority determines the premining land use and extent of farming in relation to the farm's agricultural production. If there is no history of farming on the lands, then the premining land use was not farming nor will a surface coal mining operation impact the farm's agricultural production. Therefore, OSM is not requiring Alaska to revise 11 AAC 90.149(d).

NRCS questioned why areas with permafrost or ice-covered ponds are

excluded from the provisions at 11 AAC 90.323(a). NRCS stated that permafrost or ice-covered ponds should have no impact on the need for siltation structures to maintain water quality because many areas with permafrost will, upon disturbance, mining or otherwise, release considerable sediment-laden water as the permafrost thaws. NRCS also commented that the relevancy of ice-covered ponds is not clear at all. Alaska's rule at 11 AAC 90.323(a) provides for protection of the hydrologic balance and requires, in pertinent part, that the Commissioner must make a finding, when conditions such as permafrost or ice-covered ponds are present, that the drainage will meet the applicable State and Federal water quality laws and regulations without treatment. What NCRA has interpreted to be an exclusion from the requirements of 11 AAC 90.323(a) is not an exclusion from the requirement to meet the State's water quality standards. Therefore, OSM is not requiring Alaska to revise 11 AAC 90.323(a) to remove the language concerning permafrost and ice-covered ponds.

Concerning proposed 11 AAC 90.391, NRCS questioned to what standards must revegetation occur, whether this meant native species, and if revegetation had to be compatible with the post-mining land use. Proposed 11 AAC 90.391(s) requires, in pertinent part, that all disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction. The requirements of proposed 11 AAC 90.391(s) concern stabilization of the surface area and are substantively the same as the counterpart Federal regulations at 816.71(g) and 817.71(g) (see finding No. 2). OSM states that the performance standards for revegetation are provided at 30 CFR 816.111 and 817.111, including the use of native species and compatibility with the approved postmining land use. Therefore, vegetative cover used for surface area stabilization must meet the specific requirements addressed by NRCS's questions concerning revegetation.

### 3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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 its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (administrative record No. AK-E-03). EPA did not respond to OSM's request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. AK-E-02). Neither SHPO nor ACHP responded to OSM's request.

### V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Alaska's proposed amendment as submitted on January 26 and February 13 and 14, 1995, and as revised and supplemented with additional explanatory information on October 11, 23, and 24, 1995.

With the requirement that Alaska further revise its rules, the Director does not approve, as discussed in:

(1) Finding No. 7, 11 AAC 90.321(d), concerning hydrologic balance,  
 (2) Finding No. 9, 11 AAC 90.325(a), concerning diversions and conveyance of flow,

(3) Finding No. 10(a) and (b), 11 AAC 90.327(b)(1) and (c), concerning stream channel diversions, and

(4) Finding No. 12, 11 AAC 90.341(b)(2), concerning underground mine entry and access discharges.

The Director approves, as discussed in:

(1) finding No. 1, 11 AAC 90.025(b) and (c), concerning right of entry information, 11 AAC 90.049(2) and (2)(E) through (H), concerning surface water information, 11 AAC 90.083(b)(10) and (11), concerning reclamation plan general requirements, 11 AAC 90.149(d), concerning operations near alluvial valley floors, 11 AAC 90.163(b), (c), and (c)(3)(B), concerning exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining, 11 AAC 90.391(b), concerning disposal of excess spoil or coal mine waste, 11 AAC 90.401(e), concerning coal mine waste refuse piles, 11 AAC 90.491(a), (a)(7), (c)(4), and (c)(8), concerning construction and maintenance of roads, transportation and support facilities, and utility installations, and 11 AAC 90.907(e), (f), (g), (h), and (j), concerning public participation;

(2) Finding No. 2, 11 AAC 05.010(a)(11)(D) and 11 AAC 90.011, concerning permit fees, 11 AAC 90.002, concerning responsibilities, 11 AAC 90.025(a), concerning authority to enter and ownership information, 11 AAC 90.045(a), concerning geology description, 11 AAC 90.049(2)(D), concerning surface water information, 11 AAC 90.083(b)(12), concerning reclamation plan general requirements, 11 AAC 90.097, concerning transportation facilities, 11 AAC 90.149(d)(1), concerning operations near alluvial valley floors, 11 AAC 90.163, (a), (b)(1), (c)(4), and (c)(5), concerning exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining, 11 AAC 90.207(f)(1), (2), and (4) through (7), concerning requirements for self-bonding, 11 AAC 90.375, concerning public notice of blasting, 11 AAC 90.391(h) and (s), concerning disposal of excess spoil or coal mine waste, 11 AAC 90.407(e), concerning coal mine waste dams and embankments, 11 AAC 90.409, concerning return to underground workings, 11 AAC 90.423(b) and (h), concerning protection of fish and wildlife, 11 AAC 90.443(d)(1), concerning backfilling and grading previously mined areas, 11 AAC 90.491(a)(1), (6), and (8), (c)(5) through (7), (e), and (f)(1) through (9), concerning construction and maintenance of roads, transportation and support facilities, and utility installations, 11 AAC 90.901(e), concerning authority, and 11 AAC 90.907(c) and (d), concerning public participation;

(3) Finding No. 3, 11 AAC 90.003, repeal of provisions concerning continued operation under interim permits;

(4) Finding No. 4, 11 AAC 90.099, concerning return of coal mine waste and excess spoil to abandoned underground workings;

(5) Finding No. 5, 11 AAC 90.163(c)(4) and (5), concerning exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for surface coal mining;

(6) Finding No. 11, 11 AAC 90.337(f), concerning impoundment inspections; and

(7) Finding No. 13, 11 AAC 90.345(e), concerning surface and ground water monitoring.

With the requirement that Alaska further revise its rules, the Director approves, as discussed in:

(1) Finding No. 6a., 11 AAC 90.207(f), concerning definitions of "self-bond" and other terms concerning financial statements,

(2) Finding No. 6b, 11 AAC 90.207(f)(3), concerning an agent for service,

(3) Finding No. 8, 11 AAC 90.323(a), concerning water quality standards,

(4) Finding No. 14, 11 AAC 90.443(k), concerning backfilling and grading, and

(5) Finding No. 15, concerning construction and maintenance of roads.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 902.16 that, within 60 days of the publication of this final rule, Alaska must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Alaska's established administrative or legislative procedures.

The Director approves 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.

The Federal regulations at 30 CFR Part 902, codifying decisions concerning the Alaska program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### *Effect of Director'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 alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Alaska program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by [State] of only such provisions.

### VI. Procedural Determinations

#### *1. Executive Order 12866*

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

#### *2. Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 since each such 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.

#### *3. National Environmental Policy Act*

No environmental impact statement is required for this rule since 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. 4332(2)(C)).

#### *4. 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. 3507 *et seq.*).

#### *5. Regulatory Flexibility Act*

The Department of the Interior has determined 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 that 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

#### *6. Unfunded Mandates Reform Act*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 26, 1996.

James F. Fulton,

*Acting Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations 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 by adding paragraph (d) to read as follows:

#### **§ 902.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(d) With the exception of 11 AAC 207(f), concerning requirements for self-bonds, 11 AAC 90.321(d), concerning hydrologic balance, 11 AAC 90.323(a), concerning water quality standards, 11 AAC 90.325(a), concerning diversions and conveyance of flow, 11 AAC 90.327(b)(1) and (c), concerning stream channel diversions, 11 AAC 90.341(b)(2), concerning underground mine entry and access discharges, 11 AAC 90.443(k), concerning backfilling and grading, and 11 AAC 90.491(f), concerning construction and maintenance of roads, the revisions to and additions of rules proposed in Alaska Amendment IV, as submitted to OSM on January 26, 1995, and as revised on October 11, 23, and 24, are approved effective September 17, 1996.

3. Section 902.16 is amended by adding the introductory paragraph and paragraph (b) to read as follows:

#### **§ 902.16 Required program amendments.**

Pursuant to 30 CFR 732.17(f)(1), Alaska is required to submit to OSM by the specified date the following written, proposed program amendments, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Alaska's established administrative or legislative procedures.

\* \* \* \* \*

(b) By November 18, 1996, Alaska shall revise the following rules, or otherwise modify its program, to:

(1) At 11 AAC 90.207(f), require the addition of a definition for the term "self-bond" and other financial terms used to describe self-bonds consistent with the Federal regulations at 30 CFR 800.5(c) and 800.23(a), and to require the applicant for a self-bond that is guaranteed by a corporate guarantor to retain his/her own agent for service in Alaska.

(2) At 11 AAC 90.321(d), require that water treatment facilities will be operated for as long as necessary, or add a definition of "siltation structure" that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(3) At 11 AAC 90.323(a), replace "siltation structures" with "treatment facilities," or add a definition of "siltation structure" that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(4) At 11 AAC 90.325(a), require that water treatment facilities will be operated for as long as necessary or add a definition of "siltation structure" that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(5) At 11 AAC 90.327(b)(1) and (c), require that "erosion control structures" be used when describing standards for stream channel diversions used to control erosion, and that the terms "water treatment facilities" and "water treatment facility" be retained or provide a definition of "siltation structures" that includes "water-treatment facilities."

(6) At 11 AAC 90.341(b)(2), require that any treatment facility used during the anticipated period of gravity discharge will be consistently maintained, or add a definition of "siltation structure" that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(7) At 11 AAC 90.443(k), 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 or 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).

(8) At 11 AAC 90.491(f), require the addition of provisions concerning fords of perennial or intermittent streams, 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(b)(2), (d)(5), and (d)(6) and 817.151(b)(2), (d)(5) and (d)(6).

[FR Doc. 96-23677 Filed 9-16-96; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300436; FRL-5395-8]

RIN 2070-AB78

### Pyridaben; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of the insecticide/miticide pyridaben in or on the raw agricultural commodity apples and the processed feed commodity wet apple pomace in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of pyridaben on apples in Delaware, New Jersey, and Virginia. This regulation establishes maximum permissible levels for residues of pyridaben in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170). The tolerances will expire and be revoked automatically without further action by EPA on August 23, 1997.

**DATES:** This regulation becomes effective September 17, 1996. This regulation expires and is revoked automatically without further action by EPA on August 23, 1997. Objections and requests for hearings must be received by EPA on November 18, 1996.

**ADDRESSES:** Written objections and hearing requests, identified by the docket number, [OPP-300436], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket number, [OPP-300436], should be submitted to: Public Response and Program Resources

Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300436]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Pat Cimino, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-8328, e-mail: cimino.pat@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide/miticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one] in or on apples at 0.5 part per million (ppm) and in or on wet apple pomace at 1.0 ppm. These tolerances will expire and be revoked automatically without further action by EPA on August 23, 1997.

#### I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.