connected injuries shall, except as provided below, be no greater than a maximum allowable charge for such service as determined by the Director. The schedule of maximum allowable charges is not applicable to charges for appliances, supplies, services or treatment provided and billed for by hospitals for services rendered on an inpatient basis, pharmacies or nursing homes, but is applicable to charges for services or treatment furnished by a physician or other medical professional in a hospital or nursing home setting.* * *

* * * * *

Signed at Washington, DC, this 8th day of January, 1991.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 91–826 Filed 1–11–91; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8322]

RIN 1545–AJ74

Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8322, which was published in the **Federal Register** for Tuesday, December 11, 1990 (55 FR 50827). The final regulations relate to denial of deductions and credits to nonresident alien individuals and foreign corporations that do not file true and accurate income tax returns by the time limits set forth in the final regulations.

FOR FURTHER INFORMATION CONTACT: Richard Chewning, (202) 566–3452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are necessary so that the income tax returns will be filed in a timely manner.

Need for Correction

As published, T.D. 8322 contains typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8322) which was the subject of FR Doc. 90–28772, is corrected as follows:

1. On page 50828, in the preamble, column 2, under the heading "Special Analyses", line 10, the language "these regulations, and, therefore, a final" is corrected to read "these regulations, and therefore, a final".

§ 1.874–1 [Corrected]

2. On page 50828, column 3, § 1.874–1(a), line 36, the language "by filing a claim therefor with the" is corrected to read "by filing a claim therefore with the".

3. On page 50829, column 3, § 1.874–1(d)(2), line 2, the language "described in §§ 1.871–7 or § 1.871–8 of" is corrected to read "described in § 1.871–7 or § 1.871–8 of".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–775 Filed 1–11–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[T.D. 8330]

RIN 1454–AL25

Allocation of Income Attributable to Certain Notional Principal Contracts Under Section 863(a)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations which set forth the source of income attributable to certain notional principal contracts (notional principal contract income). These final regulations are necessary to provide guidance to foreign and domestic corporations and individuals.

DATES: These regulations are effective for notional principal contract income includible in income on or after February 13, 1991. Section 1.863–7(b)(2)(iv) may be applied to notional principal contract income includible in income prior to February 13, 1991. An election is provided to apply the rules of § 1.863–7 to notional principal contract income includible in income before December 24, 1986.

FOR FURTHER INFORMATION CONTACT: Charles T. Plambeck of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202–566–6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–0132. The estimated average annual burden per respondent is 3 minutes. This time estimate is included in the burden of Form 1120X.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On August 1, 1989 the **Federal Register** published proposed amendments (54 FR 31703) to the Income Tax Regulations (26 CFR part 1) under section 863 of the Internal Revenue Code. No written comments from the Small Business Administration or the public responding to the proposed amendments were received. No public hearing was requested or held. Accordingly, the proposed amendments are adopted as modified by this Treasury Decision.

Explanation of Provisions

In response to oral comments, § 1.863–7(a)(1) is amended to include commodity swaps and to clarify the interrelationship of these regulations with the source rules of section 988. Section 1.863–7(a)(1) provides that if the notional principal contract is a section 988 transaction, § 1.863–7 does not apply. In such a case, a cross-reference to the source rules of § 1.988–4T is provided. A "properly reflected on the books" standard is added to the qualified business unit exception of § 1.863–7(b)(2)(iv). This is intended to assure that substantially uniform source rules will apply to income from notional

principal contracts in functional and nonfunctional currencies.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted without response to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Charles Thelen Plambeck, of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing the regulations.

List of Subjects

26 CFR §§ 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended to read as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended in part by removing the citation "Section 1.863–7T is issued under 26 U.S.C. 863(a)" and by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.863–7 is issued under 26 U.S.C. 863(a).

§ 1.863–7T [Removed]

Par. 2. Section 1.863–7T is removed.

Par. 3. New § 1.863–7 is added in the appropriate place to read as follows:

§ 1.863–7 Allocation of income attributable to certain notional principal contracts under section 863(a).

(a) *Scope*—(1) *Introduction* This section provides rules relating to the source and, in certain cases, the character of notional principal contract income. However, this section does not apply to income from a section 988 transaction within the meaning of section 988 and the regulations thereunder, relating to the treatment of certain nonfunctional currency transactions. Notional principal contract income is income attributable to a notional principal contract. A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract, because a taxpayer cannot enter into a contract with itself.

(2) *Effective date.* This section applies to notional principal contract income includible in income on or after February 13, 1991. However, any taxpayer desiring to apply paragraph (b)(2)(iv) of this section to notional principal contract income includible in income prior to February 13, 1991, in lieu of temporary Income Tax Regulations § 1.863–7T(b)(2)(iv) may (on a consistent basis) so choose. See paragreaph (c) of this section for an election to apply the rules of this section to notional principal contract income includible in income before December 24, 1986.

(b) *Source of notional principal contract income*—(1) *General rule.* Unless paragraph (b) (2) or (3) of this section applies, the source of notional principal contract income shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(2) *Qualified business unit exception.* The source of notional principal contract income shall be determined by reference to the residence of a qualified business unit of a taxpayer if—

(i) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(ii) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(iii) The qualified business unit is engaged in the conduct of a trade or business where it is a resident as determined under section 988(a)(3)(B)(ii); and

(iv) The notional principal contract is properly reflected on the books of the qualified business unit Whether a notional principal contract is properly reflected on the books of such qualified business unit is a question of fact. The degree of participation in the negotiation and acquisition of a notional principal contract shall be considered in this determination. Participation in connection with the negotiation or acquisition of a notional principal contract may be disregarded if the district director determines that a purpose for such participation was to affect the source of notional principal contract income.

(3) *Effectively connected notional principal contract income.* Notional principal contract income that under principles similar to those set forth in § 1.864–4(c) arises from the conduct of a United States trade or business shall be sourced in the United States and such income shall be treated as effectively connected to the conduct of a United States trade or business for purposes of sections 871(b) and 882(a)(1).

(c) *Election*—(1) *Eligibility and effect.* A taxpayer described in paragraph (b)(2)(i) of this section may make an election to apply the rules of this section to all, but not part, of the taxpayer's income attributable to notional principal contracts for all taxable years (or portion thereof) beginning before December 24, 1986, for which the period of limitations for filing a claim for refund under section 6511(a) has not expired. A taxpayer not described in paragraph (b)(2)(i) of this section that is engaged in trade or business within the United States may make an election to apply the rules of this section to all, but not part, of the taxpayer's income described in paragraph (b)(3) of this section for all taxable years (or portion thereof) beginning before December 24, 1986, for which the period of limitations for filing a claim for refund under section 6511(a) has not expired. If a taxpayer makes an election pursuant to this paragraph (c)(1) in the time and manner provided in paragraph (c) (2) and (3) of this section, then, with respect to such taxable years (or portion thereof), no tax shall be deducted or withheld under sections 1441 and 1442 with respect to payments made by the taxpayer pursuant to a notional principal contract the income attributable to which is subject to such election. The election may be revoked only with the consent of the Commissioner.

(2) *Time for making election.* The election specified in paragraph (c)(1) of this section shall be made by May 14, 1991

(3) *Manner of making election* The election described in paragraph (c)(1) of this section shall be made by attaching a

statement to the tax return or an amended tax return for each taxable year beginning before December 24, 1986, in which the taxpayer accrued or received notional principal contract income. The statement shall—

(i) Contain the name, address, and taxpayer identifying number of the electing taxpayer;

(ii) Identify the election as a "Notional Principal Contract Election under § 1.863–7"; and

(iii) Specify each taxable year described in paragraph (c)(1) of this section in which payments were made.

(d) *Example.* The operation of this section is illustrated by the following example:

(1) On January 1, 1990, X, a calendar year domestic corporation, entered into an interest rate swap contract with FZ, an unrelated foreign corporation. X does not have a qualified business unit outside the United States. Under the contract, X is required to pay FZ fixed rate dollar amounts, and FZ is required to pay X floating rate dollar amounts, each determined solely by reference to a notional dollar denominated principal amount specified under the contract. The contract is a notional principal contract under § 1.863–7(a) because the contract provides for the payment of amounts at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for a promise to pay similar amounts.

(2) Assume that during 1990 X had notional principal contract income of $100 in connection with the notional principal contract described in (1) above. Also assume that the contract provides that payments more than 30 days late give rise to a $5 fee, and that X receives such a fee in 1990. Under paragraph (b)(1) of this section, the source of X's $100 of income attributable to the swap agreement is domestic. The $5 fee is not notional principal contract income.

(e) *Cross references.* See § 1.861–9T(b) for the allocation of expense to certain notional principal contracts. For rules relating to the source of income from nonfunctional currency notional principal contracts, see § 1.988–4T. For rules relating to the taxable amount of notional principal contract income allocable under this section to sources inside or outside the United States, see § 1.863–1(c).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by adding in the appropriate place in the table the entry "§ 1.863–7 * * * 1545–0132" and by removing the entry "§ 1.863–7T * * * 1545–0132".

Approved: November 13, 1990.

Kenneth W. Gideon,

Assistant Secretary of Treasury.

[FR Doc. 91–526 Filed 1–11–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

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

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program), as administered by the Colorado Mined Land Reclamation Division (MLRD) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to administration, alluvial valley floors, permit applications, ownership and control, permit conditions, coal exploration, archaeology and cultural resources, civil penalties, restriction on financial interests of State employees, diversions, siltation structures, impoundments, hydrologic balance protection, inspection and enforcement, use of explosives, excess spoil, coal mine waste, backfilling and grading, prime farmland, reclamation plans, and fish and wildlife. The amendment revises the Colorado program to be consistent with SMCRA and the Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program as administered by MLRD. Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82211). Actions concerning program amendments taken subsequent to the approval of the Colorado program are found at 30 CFR 906.15, 906.16, and 906.30.

II. Submission of Proposed Amendment

By letter dated July 18, 1989, Colorado submitted to OSM a proposed amendment to the rules of the Colorado program at 2 CCR 407–2 (Administrative Record No. CO–457). The amendment pertains to administration, alluvial valley floors, permit applications, ownership and control, permit conditions, coal exploration, archaeology and cultural resources, civil penalties, restriction on financial interests of State employees, diversions, siltation structures, impoundments, hydrologic balance protection, inspection and enforcement, use of explosives, excess spoil, coal mine waste, backfilling and grading, prime farmland, reclamation plans, and fish and wildlife. Colorado submitted parts of the proposed amendment at its own initiative and other parts in response to OSM's letters dated May 7, 1986, June 9, 1987, November 14, 1988, and May 11, 1989 (Administrative Record Nos. CO–282, CO–342, CO–418, and CO–441). These letters were issued in accordance with 30 CFR 732.17(d) and notified Colorado of required amendments to its program. OSM published a notice in the **Federal Register** on August 10, 1989 (54 FR 32828), announcing receipt of the proposed amendment to the Colorado program and inviting public comment on its adequacy (Administrative Record No. CO–459). The public comment period closed on September 11, 1989.

After reviewing the proposed amendment and all comments received, OSM notified Colorado by letter dated November 3, 1989 (Administrative Record No. CO–475), of several provisions in its proposed amendment that appeared to be inconsistent with the Federal regulations.

By letter dated January 17, 1990 (Administrative Record No. CO–477), Colorado submitted additional explanatory information and a revised proposed amendment. In this revised proposed amendment, Colorado withdrew its proposed rules concerning rescission of improvidently issued permits (Rule 2.11). To allow the public an opportunity to comment on the additional material submitted by Colorado, OSM published a notice in **Federal Register** on February 9, 1990 (55 FR 4625), reopening and extending the

comment period (Administrative Record No. CO–479). The reopened comment period closed on February 26, 1990.

After reviewing the additional explanatory information and the proposed revisions to the amendment and all comments received, OSM notified Colorado by letter dated March 15, 1990 (Administrative Record No. CO–494), of a few provisions of its proposed amendment that continued to be inconsistent with the Federal regulations.

By letter dated April 5, 1990 (Administrative Record No. CO–498), Colorado responded by submitting additional explanatory information and revisions to the proposed amendment. In this response, Colorado withdrew all revisions to the definition of "previously mined area" (Rule 1.04(94a)). To allow the public an opportunity to comment on the additional material submitted by Colorado, OSM published a notice in the **Federal Register** on April 27, 1990 (55 FR 17758), reopening and extending the comment period (Administrative Record No. CO–501). The reopened comment period closed on May 14, 1990.

After reviewing the proposed revisions to the amendment and all comments received, OSM notified Colorado by letter dated May 14, 1990 (Administrative Record No. CO–504), of the remaining issues for the proposed amendment.

By letter dated May 23, 1990 (Administrative Record No. CO–508), Colorado responded by submitting additional clarification of its rules and withdrawing its proposed rule concerning hydrologic protection at Rule 4.05.6(4)(f).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Colorado on July 18, 1989, as subsequently revised on January 17, April 5, and May 23, 1990. The Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and ongoing oversight of the Colorado program.

1. Substantive Revisions to Colorado's Rules That Are Substantially Similar to the Counterpart Federal Regulations

Colorado proposes revisions to the following rules that are substantive in nature and contain language substantially identical to the counterpart Federal regulations (shown in brackets).

Alluvial valley floors—Rules 2.06.8 (3)(c)(i)(B)(I) and (3)(c)(ii)(B) [30 CFR 701.5 and 785.19(a)(2)];

Permit information requirements—Rules 2.03.4; 2.03.5 (3) and (4); 2.07.7(5); and 5.03.2(1)(d) [30 CFR 778.13 (b), (c), and (d); 778.14(c); 773.17(i); and 843.11(g)];

Ownership and control—Rules 1.04(83a); and 2.07.6 (1)(b), (1)(d), (2)(h), and (10)(c) [30 CFR 773.5; and 773.15 (b)(2), (b)(3), and (e)];

Permitting—Rule 2.07.7(4) [30 CFR 773.17(g)];

Coal exploration—Rules 2.02.7(2)(a); and 4.21.4 (7) and (7)(c) [30 CFR 772.15(b) and 815.15(f)];

Civil penalties—Rules 1.04(153); 5.03.5 (1)(d) and (4)(e); and 5.04.7 (2), (3), and (4) [30 CFR Part 846];

Restriction on financial interests of State employees—Rules 1.10.2(2) and 1.10.4(1) [30 CFR 705.4(d) and 705.11(a)];

Diversions—Rules 4.05.3(1) (a), (b), and (f); 4.05.3(7)–(9); and 4.05.4(1) [30 CFR 816.43(b)(1) and 817.43(b)(1)];

Siltation structures—Rules 4.05.6 (3)(c), (3)(d), (3)(e), (4), (5), (6), (11), (11)(i), (11)(j), (11)(k), (12), and (13)(b) [30 CFR 816.46(c), 817.46(c), 816.49(a), and 817.49(a)];

Impoundments—Rules 4.05.9 (1)(a), (1)(e), and (1)(f); 4.05.9 (3) and (3)(a); 4.05.9 (4), (5), and (12) [30 CFR 816.49 (a) and (b), and 817.49 (a) and (b)];

Hydrologic balance protection—Rules 4.05.8(2) [30 CFR 816.41(f)(1)(i) and 817.41(f)(1)(i)];

Use of explosives—Rules 4.08.1(3); 4.08.4(6)(c); and 4.08.5(4)(c) [30 CFR 816.61 (b)(2) and (c), 817.61 (b)(2) and (c), 816.68, and 817.68];

Excess spoil—Rules 4.09.1(10); and 4.09.2 (2)(a) and (3) [30 CFR 816.71 (d)(2), (f)(3), and (e)(2)];

Coal mine waste—Rules 4.11.5 (3)(b) and (3)(d) [30 CFR 816.84 (b)(2) and (f), and 817.84 (b)(2) and (f)];

Backfilling and grading—Rule 4.23.2(7) [30 CFR 816.19];

Prime farmland—Rule 4.251(2) [30 CFR 823.11(a)];

Reclamation plan—Rules 2.05.3(4)(a)(ii)(B) and (4)(b) [30 CFR 780.25 and 784.16(c)(3)]; and

Fish and wildlife—Rule 2.05.6(2)(c) [30 CFR 780.16(c)].

Because the proposed revisions to these Colorado rules: (1) Contain language that is substantially identical to the counterpart Federal regulations; or (2) add specificity without adversely affecting other aspects of the program, the Director finds that these proposed Colorado rules are no less effective than the counterpart Federal regulations. Therefore, the Director approves these proposed rules.

2. Administration, Rule 1.01(9)

Colorado proposes at Rule 1.01(9) that "[T]he materials incorporated in these rules by reference do not include later amendments to or editions of the incorporated materials." Colorado stated that it was proposing this rule to comply with the terms of Colorado's Administrative Procedures Act at Colorado Revised Statutes (C.R.S.; 1989) 24–4–103(12.5)(c).

The effect of proposed Rule 1.01(9) is that any Federal regulations or technical publications incorporated by Colorado's rules would be incorporated as they existed at the time that Colorado initially proposed its rules. The rules proposed by Colorado (that are affected by proposed Rule 1.01(9)) and the Federal regulations and technical publications they incorporate by reference (shown in brackets) are:

Siltation structures, impoundments, and coal mine waste—Rules 4.05.6(11) (j) and (k), and (12); 4.05.6(13)(b), (b)(i), and (b)(ii); 4.05.9(4), and (5) (a) and (b); 4.05.9(13) and (13)(c); and 4.11.5(3)(b) [Mine Safety and Health Administration's (MSHA's) regulations at 30 CFR 77.216];

Permanent impoundments—Rules 4.05.9(1) (e) and (f) [U.S. Soil Conservation Service's (SCS's) technical publication Public Standard 378, "Ponds," Colorado, January 1989]; and

Large temporary and permanent impoundments—Rules 4.05.9(3) (a) and (b) [MSHA's Federal regulations at 30 CFR 77.216 and SCS's technical publication U.S. SCS Technical Release No. 60, "Earth Dams and Reservoirs," June 1976].

The Director is approving these rules as no less effective than the counterpart Federal regulations at 30 CFR 816.46(c), 816.49 (a) and (b), 816.84(b), 817.46(c), 817.49 (a) and (b), and 817.84(b). (See related finding Nos. 1, and 12 for Rule 4.05.9(13).) However, should MSHA or SCS publish revisions to their regulations or technical publications, OSM would require Colorado to submit a program amendment to incorporate the revisions.

There is no Federal counterpart regulation to proposed Rule 1.01(9). The Director finds that proposed Rule 1.01(9), which Colorado proposes to comply with other Colorado statutes, is not inconsistent with the Federal regulations. Therefore, the Director approves Colorado's proposed Rule 1.01(9).

3. Definition of "Impoundment," Rule 1.04(64)

Colorado's proposes at Rule 1.04(64) to define "impoundment" as "a closed basin, naturally formed or artificially built, which is built to or does in fact retain water, sediment, or slurried waste in support of *mining and reclamation operations*" (emphasis added). With one exception, the proposed definition is substantively identical to the Federal definition of "impoundments" at 30 CFR 701.5. The exception is that Colorado limits its definition to those basins used in support of "mining and reclamation operations."

Colorado does not specifically define "mining and reclamation operations," but it does define "*surface* coal mining and reclamation operations" (emphasis added) at existing Rule 1.04(133). This definition includes the definition of "surface coal mining operations" at Rule 1.04(132). The Director finds Colorado's proposed definition of "impoundment" at Rule 1.04(64) no less effective than the counterpart Federal definition of "impoundments" at 30 CFR 701.5, with the understanding that Colorado's definition of "impoundment" means all basins, naturally formed or built, in support of all activities listed under the definitions of "surface coal mining operations" and "surface coal mining and reclamation operations" at Rules 1.04(132) and 1.04(133). Therefore, the Director approves Colorado's proposed definition of "impoundment" at Rule 1.04(64).

4. Definition of "Knowingly," Rule 1.04(70a)

Colorado proposes at Rule 1.04(70a) to define "knowingly" as meaning "with respect to individual civil penalties, that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal to comply with any regulatory requirements or order of the Board." With the exception of the phrase "to comply with any regulatory requirements or order of the board," this definition is substantively identical to the Federal definition of "knowingly" at 30 CFR 846.5. The Director interprets "regulatory requirements" very broadly so as to include all substantive requirements of the approved regulatory program, including but not limited to orders of MLRD. On this basis, the Director finds Colorado's proposed Rule 1.04(70a) to be no less effective than the counterpart Federal definition of "knowingly" at 30 CFR 846.5. Therefore, the Director approves Colorado's proposed definition of "knowingly" at Rule 1.04(70a).

5. Definition of "Sedimentation Pond," Rule 1.04(115)

Colorado proposes a definition for "sedimentation pond" at Rule 1.04(115) which states in part that "[t]he State engineer's requirements at C.R.S. 37–87–105 are not applicable to those structures designed solely to control sediment and which do not store water." Colorado is repeating in its proposed rule the exemption found at C.R.S. 37–87–114.5, which exempts from the state engineer's office requirements of C.R.S. sections 37–87–105 through 37–87–114, structures not designed or operated for the purpose of storing water and siltation structures permitted under Article 33 of title 34, C.R.S.

There is no counterpart requirement in the Federal definition of "sedimentation pond" at 30 CFR 701.5. The remainder of Colorado's proposed definition is substantively identical to the Federal definition at 30 CFR 701.5.

The Director finds that the proposed definition of "sedimentation pond" at Rule 1.04(115), which Colorado in part proposes to clarify the relationship of this proposed rule to other Colorado rules, is not inconsistent with the Federal regulations concerning hydrology at 30 CFR 816.45 through 816.56, and 30 CFR 817.45 through 817.56, and is no less effective than the counterpart Federal definition at 30 CFR 701.5. Therefore, the Director approves Colorado's proposed definition of "sedimentation pond" at Rule 1.04(115).

6. Archaeology and Cultural Resources, Rule 2.02.3(1)(c)(i)

Colorado proposes at Rule 2.02.3(1)(c)(i) that a coal exploration and reclamation plan include, among other things, "[a] narrative description of * * * districts, sites, buildings or structures or objects listed on or known to be eligible for listing on the National Register of Historic Places; known archaeological resources located within the proposed exploration area; and any other information that may be required regarding historic or archaeological resources."

The Federal regulation at 30 CFR 772.12(b)(8) requires that an applicant for a permit for exploration removing more than 250 tons of coal provide a description of cultural or historical resources listed or known to be eligible for listing on the National Register of Historic Places, and known archaeological resources located within the proposed exploration area. 30 CFR 772.12(b)(8) also requires "any other information which the regulatory authority may require regarding *known or unknown* historical or archaeological resources" (emphasis added). The term "unknown" refers to resources which may exist but have, as yet, not been recorded. This reference makes explicit the authority to require a permit applicant to obtain information on not yet discovered historic or archaeological resources in order for the regulatory authority to make reasonable and informed decisions regarding the protection of such resources on the proposed permit area. This information might take the form of predictions of the probability of cultural resources existing on the area, based upon data from the surrounding area, or results of inventory or sample surveys. If sufficient data exist for the area, the regulatory authority may not need any further information, but the authority to require necessary additional data must be present within the rules.

Colorado orally indicated that it interprets the proposed rule to cover unknown as well as known resources, and furthermore, that all coal exploration permits are submitted to the State Historic Preservation Office (SHPO) for his review and recommendations concerning the need to collect additional information (March 2, 1989, meeting between Colorado and OSM, Administrative Record No. CO–430). In Colorado's April 5, 1990, revised proposed amendment, Colorado also stated in its "statement of basis and purpose" for the proposed rule that "[p]reviously unknown resources are to be considered for further research if identified in an exploration area."

The Director finds that Colorado's proposed Rule 2.02.3(1)(c)(i), which authorizes Colorado to request "any other information that may be required regarding historic or archaeological resources," as augmented by its March 2, 1989, and April 5, 1990 policy statements, is no less effective than the Federal regulation at 30 CFR 772.12(b)(8). Therefore, the Director approves Colorado's proposed Rule 2.02.3(1)(c)(i).

7. Minimum Requirements for Surface- and Ground-Water Monitoring Plans, Rules 2.04.7(1)(a)(v) and 2.05.6(3)(b)(iv)

In response to a required program amendment at 30 CFR 906.16, Colorado proposes at Rule 2.04.7(1)(a)(v) that baseline ground-water samples be analyzed for total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese.

OSM, at 30 CFR 906.16 (December 11, 1989, 54 FR 50739, 50743; see finding No. 6), required Colorado to either: (1) Amend Rule 2.05.6(3)(b)(iv) to require that ground-water monitoring plans include the monitoring of total iron and total manganese; or (2) amend Rule 2.04.7(1) to require at a minimum that ground-water baseline information include measurements of total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. The Director placed this requirement on Colorado because proposed Rules 2.05.6(3)(b)(iv) and 2.04.7(1) were less effective than the Federal regulations at 30 CFR 780.21 (b)(1) and (i) and 784.14 (b)(1) and (h).

Colorado's proposed Rule 2.04.7(1)(a)(v) satisfies the latter option

of the required amendment at 30 CFR 906.16. Therefore, the Director finds that proposed Rules 2.05.6(3)(b)(iv) and 2.04.7(1)(a)(v) are no less effective than the Federal regulations at 30 CFR 780.21(b)(1) and (i) and 784.14(b)(1) and (h). The Director approves Colorado's proposed Rule 2.04.7(1)(a)(v) and removes the required amendment at 30 CFR 906.16.

8. Confidential Information for Permits, Rule 2.07.5(3)

In another amendment to its program (Administrative Record No. CO–384), Colorado, on August 23, 1988, proposed at Rule 2.07.5(3) that "[p]ersons either seeking or opposing the disclosure or non-disclosure of confidential [permit] information under this rule may request a formal hearing of the Board in accordance with Rule 2.07.4(3) by filing a written request within 30 days of the Division's decision on confidentiality." Colorado proposed this rule in response to OSM's May 7, 1986, 30 CFR part 732 letter, requiring that Colorado, to be no less effective than the Federal regulations at 30 CFR 773.13(d)(3), must establish notice and hearing procedures for persons both seeking and opposing disclosure of confidential information (see item No. Q–6).

At 30 CFR 906.15(m), OSM approved this proposed rule (December 11, 1989, 54 FR 50739, 50744; see finding No. 1). However, when Colorado promulgated the amendment on January 3, 1990 (Administrative Record No. CO–481), it did not include the revision to Rule 2.07.5(3) that was approved by OSM.

By letter dated March 7, 1990 (Administrative Record No. CO–495), Colorado requested that proposed Rule 2.07.5(3) be withdrawn from consideration by OSM. It is not procedurally possible to withdraw a proposed rule after OSM has published its decision on it in a final rule **Federal Register** notice without republishing a proposed rule **Federal Register** notice, providing for public comment on Colorado's proposed deletion of the rule from its program.

While OSM, in accordance with 30 CFR 773.13(d)(3), requires that States establish notice and hearing procedures for persons both seeking and opposing disclosure of confidential information, there is no requirement that the procedures be submitted to OSM for review as a program amendment. However, OSM is obligated to ensure that notice and hearing procedures regarding confidential information are developed and are in effect. Therefore, for the Colorado program to be no less effective than Federal regulation 30 CFR 773.13(d), the Director requires that Colorado either: (1) Demonstrate to OSM that such procedures have already been adopted by Colorado and are in place; (2) promulgate the revision at Rule 2.07.5(3) as it was submitted by Colorado and approved by OSM on December 11, 1989; or (3) amend its program to require that notice and hearing procedures for persons both seeking and opposing disclosure of confidential information be developed.

9. Termination of Jurisdiction, Rule 3.03.3

Colorado proposes at Rule 3.03.3(1) that "[t]he Division may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when the Division determines in writing that under the permanent program, all requirements of these rules and the act have been successfully completed and where a performance bond was required, the division has made a final decision in accordance with Rule 3.03 to release the performance bond fully." It further proposes at Rule 3.03.3(2) that "[t]he Division shall reassert jurisdiction under these rules and the act over a site if it is demonstrated that the bond release or written determination referred to in paragraph (1) of this section was based upon fraud, collusion, or misrepresentation of a material fact."

Colorado's proposed Rules 3.03.3 (1) and (2) are substantively identical to the Federal regulations at 30 CFR 700.11(d). However, the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 700.11(d) were contrary to sections 521 (a)(1) and (a)(2) of SMCRA (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, and 89–0141, D.D.C., August 30, 1990). More specifically, the court interpreted sections 521 (a)(1) and (a)(2) as imposing an on-going duty upon the Secretary of the Interior to correct violations of SMCRA. Accordingly, the court remanded the Federal regulations at 30 CFR 700.11(d) to the Secretary to be withdrawn or revised.

Because the Director is pursuing an appeal of the court's remand of this rule, the Director is deferring his decision on proposed Rules 3.03.3 (1) and (2). Until such time as the Director takes action on his deferral and decides to approve or not approve the proposed rules, Colorado may not promulgate and implement proposed Rules 3.03.3 (1) and (2).

The Director will, pursuant to 30 CFR 732.17(d), notify Colorado of any regulatory changes needed for the above rules.

10. Diversions, Rules 4.05.3(1) (c), (d), and (e)

Colorado proposes respectively at Rules 4.05.3(1) (c), (d), and (e) that diversions: (1) Comply with applicable local, State, and Federal statutes and regulations; (2) be *designed and located* so as not to increase the potential for downstream flooding, or otherwise endanger property or public safety; and (3) be *designed* to minimize adverse impacts to the hydrologic balance and to be stable.

The counterpart Federal regulations at 30 CFR 816.43(a)(2) (i), (ii), and (iv) require that diversions be *designed, located, constructed, maintained, and used* to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations. In the preamble to the Federal regulations, OSM reasoned that diversions must be " 'designed, constructed, and maintained' * * * [to] provide sufficient regulatory control to assure both onsite and offsite protection of the hydrologic balance and assure that all necessary safety design factors are incorporated into diversions and their appurtenant structures" (47 FR 22712, 22723, June 25, 1982; emphasis added).

The Director finds that Colorado's proposed Rules 4.05.3(1) (c), (d), and (e) are less effective than the Federal regulations at 30 CFR 816.43(a)(2) (i), (ii), and (iv) to the extent that they do not require that all diversions be *located, constructed, maintained, and/or used* to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations. The Director is approving these proposed rules, but he is requiring that Colorado further revise Rule 4.05.3(1) to require that all diversions be located, constructed, maintained, and used to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations.

(Please note that Colorado proposes at Rule 4.05.4(1)(b) that stream channel diversions and stream channel reconstruction "comply with the requirements of rules 4.05.3 (b)–(f)." The correct citation should be 4.05.3(1) (b) through (f). The Director is approving proposed Rule 4.05.4 (see finding No. 1); however, Colorado has been notified of the need to correct the typographical error at proposed Rule 4.05 4(b).)

11. Hydrologic Protection, Rule 4.05.8(1)

Colorado proposes at Rule 4.05.8(1) a requirement that operators avoid creating drainage from acid-forming and toxic-forming spoil or underground development waste into ground or surface water by identifying, burying, and treating, where necessary, spoil and waste which "may be detrimental to vegetation or may adversely affect water quality if not treated or buried."

The Federal regulations at 30 CFR 816.41(f)(1)(i) and 817.41(f)(1)(i) require the same operator actions where spoil and waste may be detrimental to vegetation or may adversely affect water quality, but they also require such operator actions when spoil and waste may be detrimental to "public health and safety."

Because the Federal regulations contain the extra provision to protect public health and safety, they apply more broadly than does Colorado's proposed Rule 4.05.8(1). Therefore, the Director finds Colorado's proposed Rule 4.05.8(1) less effective than the Federal regulations at 30 CFR 816.41(f)(1)(i) and 817.41(f)(1)(i) to the extent that it does not specifically apply to instances where acid-forming and toxic-forming spoil and underground development waste may be detrimental to "public health and safety." The Director approves Rule 4.05.8(1) but requires that Colorado further revise Rule 4.05.8(1) to require operators to identify, bury, and treat acid-forming and toxic-forming spoil and waste where such spoil and waste may be detrimental to public health and safety.

12. Impoundments, Rules 4.05.9(1)(g), 4.05.9(2), 4.05.9(3)(b), and 4.05.9 (4) through (13)

Colorado proposes impoundment rules at Rule 4.05.9 that are organized such that Rule 4.05.9(1) is entitled "permanent impoundments," Rule 4.05.9(2) is entitled "temporary impoundments," and Rule 4.05.9(3) is entitled "large impoundments" and applies to both temporary and permanent impoundments. After these rules, Colorado proposes Rules 4.05.9 (4) through (13), which are untitled and which Colorado has stated apply to both temporary and permanent impoundments (Administrative Record No. CO–498).

(a) *Rule 4.05.9(1)(g).* Colorado proposes at Rule 4.05.9(1)(g) (previously codified as Rule 4.05.9(1)(f)) requirements regarding design of spillway systems. As the title for Rule 4.05.9(1) indicates, proposed Rule 4.05.9(1)(f) applies only to permanent impoundments. The counterpart Federal regulations at 30 CFR 816.49(a)(9) and 817.49(a)(9) apply to both temporary and permanent impoundments.

The Director finds that proposed Rule 4.05.9(1)(g) is less effective than the Federal regulations at 30 CFR 816.49(a)(9) and 817.49(a)(9) to the extent that it does not apply to temporary as well as permanent impoundments. Therefore, the Director approves Rule 4.05.9(1)(g) but requires that Colorado further revise Rule 4.05.9 to clearly indicate that Rule 4.05.9(1)(g) applies to temporary as well as permanent impoundments.

(b) *Rule 4.05.9(2).* Colorado proposes at Rule 4.05.9(2) that "temporary impoundments of water *in which the water is impounded by a dam*" shall meet various requirements of its rules. The phrase "in which the water is impounded by a dam" limits temporary impoundments only to those temporary impoundments created by a dam. This conflicts with Colorado's proposed definition of "impoundment" at Rule 1.04(64) which the Director is approving (see finding No. 3), and which includes naturally-formed basins and therefore does not limit the term to artificially built basins. The Federal definition of "impoundments" at 30 CFR 701.5 includes structures and depressions, either naturally formed or artificially built.

The Director finds Colorado's proposed Rule 4.05.9(2) less effective than the Federal regulation at 30 CFR 701.5 to the extent that it limits temporary impoundments to such impoundments created by dams. Specifically, the Director does not approve the phrase "in which water is impounded by a dam" and requires Colorado to amend Rule 4.05.9(2) to remove this phrase.

(c) *Rule 4.05.9(3)(b).* Colorado proposes at Rule 4.05.9(3)(b) requirements for the design of spillway systems. As the title for Rule 4.05.9(3) indicates, proposed Rule 4.05.9(3)(b) applies to large impoundments, both temporary and permanent. The corresponding Federal regulations at 30 CFR 816.49(a)(8) and 817.49(a)(8) apply to temporary and permanent impoundments of any size.

Colorado stated that the same spillway design requirements are specified at 4.05.9(1)(f) for permanent impoundments of any size, and at 4.05.9(2) for temporary impoundments of any size. Colorado also agreed to reorganize the structure, and thereby clarify, its hydrology rules (Administrative Record No. CO–508). OSM's review of Colorado's proposed rules confirms that the spillway design requirement for large impoundments at 4.05.9(3)(b) is repeated at Rules 4.05.9(1)(f) and 4.05.9(2), which address permanent and temporary impoundments of any size.

Therefore, the Director finds that proposed Rule 4.05.9(3)(b) is no less effective than the Federal regulations at 30 CFR 816.49(a)(8) and 817.49(a)(8). However, the Director encourages Colorado to reorganize and clarify its hydrology rules.

(d) *Rules 4.05.9(4) through (13).* Colorado proposes at Rules 4.05.9 (4) through (13) requirements concerning various performance standards and inspections of impoundments. Although Colorado has stated that Rules 4.05.9 (4) through (13) apply to both temporary and permanent impoundments, this statement is not clearly supported by the organization of Rule 4.05.9 and the specific language of proposed Rules 4.05.9 (4) through (13). The Director finds that Colorado's proposed Rules 4.05.9 (4) through (13) are less effective than the Federal regulations at 30 CFR 816.49 and 817.49 to the extent that it is not clear that they apply to both temporary and permanent impoundments. Therefore, the Director approves Rules 4.05.9 (4) through (13), but requires that Colorado amend Rule 4.05.9 to clearly indicate that Rules 4.05.9 (4) through (13) apply to both temporary and permanent impoundments.

13. Alternative Contemporaneous Reclamation Schedules, Rule 4.14.1(1)(e)

Colorado's existing Rules 4.14.1(1) (a) through (d) set forth schedules for timing of backfilling and grading for contour mining, open pit mining with thin overburden, area strip mining, and surface areas disturbed incidental to underground mining activities. Colorado's proposes at Rule 4.14.1(1)(e) that "[t]he division may approve alternative backfilling and grading schedules which are consistent with the above requirements [(a) through (d)]. Alternative schedules may apply to geographic limits, mining methods, or other categories selected by the division. Each backfilling and grading schedule approved by the division shall incorporate one of the following two standards to govern the completion of the backfilling and grading. (i) [m]aximum time interval between coal removal and the completion of backfilling and grading; or (ii) [m]aximum extent of the operation between coal removal and the completion of backfilling and grading, as measured in linear feet, number of spoil ridges, or other quantifiable equivalent."

The corresponding Federal regulation at 30 CFR 816.100 (48 FR 24638, June 1,

1983) (1) requires that reclamation efforts on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under 30 CFR 785.18, and (2) states that regulatory authorities may establish schedules that define contemporaneous reclamation.

However, the contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by the U.S. District Court for the District of Columbia to the extent that it did not specify both time and distance factors defining contemporaneous reclamation (*In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III*, No. 79–1144 (D.D.C. Oct. 1, 1984), 21 Env't Rep. Cas. 1724 and 620 F. Supp. 1519 (D.D.C. 1985, Mem. Op. at 52). The Federal regulation at 30 CFR 816.101(a) (44 FR 15312 at 15411, March 13, 1979), which had been in effect prior to OSM's promulgation of the remanded regulation at 30 CFR 816.100, did specify such time and distance factors.

Although OSM never actually suspended the remanded regulation, OSM may not, because of the court's remand, use the June 1, 1983, Federal regulation in evaluating the sufficiency of Colorado's proposed rule. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the court's decision and the applicable provisions of SMCRA.

Colorado's existing Rules 4.14.1(1) (a) through (d) are substantively identical to the March 13, 1979, Federal regulation at 30 CFR 816.101(a). Colorado's proposed Rule 4.14.1(1)(e) specifies that alternative backfilling and grading schedules be consistent with Rules 4.14.1(1) (a) through (d), and that either time or distance factor be used in determining the alternative schedules. However, because the proposed rule does not specifically define what the alternative schedules would be, the Director cannot determine whether the alternative schedules are consistent with: (1) Section 515(b)(16) of SMCRA, which requires that "all reclamation efforts proceed * * * as contemporaneously as practicable with the surface coal mining operations;" or (2) the court's decision, which required that the Federal regulation specify time and distance factors in defining contemporaneous reclamation. For these reasons, the Director finds that Colorado's proposed Rule 4.14.1(1)(e) is less stringent than section 515(b)(16) of SMCRA. Therefore, the Director is not approving proposed Rule 4.14.1(1)(e) and is requiring Colorado to remove the rule from the Colorado program.

14. Inspection and Enforcement for Inactive Mines, Rule 5.02.2(4)(b)

Colorado proposes a revision of the definition of inactive mines at Rule 5.02.2(4)(b) such that an inactive surface coal mining and reclamation operation is one for which "the permittee's performance bond has been fully released by the Division in accordance with 3.03.2 upon successful establishment of revegetation as defined in 3.03.1." Referenced Rule 3.03.2 includes procedures for seeking release of performance bonds, and referenced Rule 3.03.1 includes criteria and schedules for release of performance bonds. Rules 3.03.1(2) (a), (b), and (c) allow for 60 percent bond release (phase I), 85 percent bond release (phase II), and total bond release (phase III).

The counterpart Federal regulation at 30 CFR 840.11(f) defines an inactive surface coal mining and reclamation operation as one for which "[r]eclamation phase II as defined at [30 CFR 800.40] has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program."

Colorado does not specifically state that an inactive mine is one for which the permittee's phase II bond has been released, although this is implied by the words "upon successful establishment of revegetation." Phase II bond release at Rule 3.03.1(2)(b) is predicated upon the successful establishment of revegetation. In addition, Colorado clarified in the "basis of statement and purpose" for the proposed rule that successful establishment of revegetation is Phase II bond release.

Based upon Colorado's clarification in the "basis of statement and purpose," the Director finds Colorado's proposed Rule 5.02.2(4)(b) no less effective than the Federal regulation at 30 CFR 840.11(f). The Director approves proposed Rule 5.02.2(4)(b); however, he encourages Colorado, during its next rulemaking activity, to revise Rule 5.02.2(4)(b) to clarify that a surface coal mining and reclamation operation is considered an inactive mine only after the permittee's bond has been released in accordance with Rule 3.03.1(2)(b).

15. Abandoned Sites, Rules 5.02.2 (8) and (9)

Colorado proposes at Rules 5.02.2 (8) and (9) a definition of abandoned site which requires inspections of abandoned sites as necessary to monitor for changes of environmental conditions or operational status.

Colorado's proposed Rules 5.02.2 (8) and (9) are substantively identical to the Federal regulations at 30 CFR 840.11 (g) and (h). However, the U.S. District Court for the District of Columbia (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, and 89–0141, D.D.C., August 30, 1990) found that the Federal regulations at 30 CFR 840.11 (g) and (h) are inconsistent with section 517(c) of SMCRA which provides for no exceptions to the requirement to conduct an average of one partial inspection per month and one complete inspection per calendar quarter for each surface coal mining and reclamation operation. Accordingly, the court remanded the Federal regulations at 30 CFR 840.11 (g) and (h) to the Secretary to be withdrawn or revised.

Although OSM has not yet actually suspended the Federal regulations, OSM may not, because of the court's remand, use the regulations at 30 CFR 840.11 (g) and (h) in evaluating the sufficiency of Colorado's proposed rules. Accordingly, OSM evaluated the proposed rules against the appropriate provisions of SMCRA as interpreted by the court.

Based upon the court's finding that the Federal regulations at 30 CFR 840.11 (g) and (h) are inconsistent with section 517(c) of SMCRA, the Director finds that Colorado's proposed rules at 5.02.2 (8) and (9), which are substantively identical to the Federal regulations at 30 CFR 840.11 (g) and (h), are less stringent than section 571(c) of SMCRA. Therefore, the Director is not approving Colorado's proposed Rules 5.02.2 (8) and (9) and is requiring Colorado to remove Rules 5.02.2 (8) and (9) from the Colorado program.

The Director will, pursuant to 30 CFR 732.17(d), notify Colorado of any regulatory changes needed for Rule 5.02.2.

16. Individual Civil Penalties, Rule 5.04.7(1)

Colorado proposes at Rule 5.04.7(1) that an individual civil penalty may be assessed against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal to comply with regulatory requirements or orders of the Board, but that "[a]n individual civil penalty shall not be assessed in situations resulting from a violation until a *failure to abate* cessation order has been issued by the Division to the corporate permittee for the violation,

and the cessation order has remained unabated for 30 days" (emphasis added).

Colorado's proposed rule is substantively identical to the Federal regulation at 30 CFR 846.12(b) with the exception that 30 CFR 846.12(b) discusses situations resulting from a violation in which a *cessation order* has been issued and has remained unabated for 30 days. The general term "cessation order" includes both failure to abate and imminent harm cessation orders.

Because Colorado's proposed rule limits the issuance of individual civil penalties for those unabated violations resulting in failure to abate cessation orders, and the Federal regulation allows for issuance of individual civil penalties for those unabated violations resulting in either imminent harm or failure to abate cessation orders, the Director finds Colorado's proposed Rule 5.04.7(1) less effective than the Federal regulation at 30 CFR 846.12(b). The Director is not approving Rule 5.04.7(1) to the extent that it limits the issuance of individual civil penalties for those violations resulting in failure to abate cessation orders. Specifically, he is not approving the phrase "failure to abate." Therefore, the Director is requiring Colorado to revise Rule 5.04.7(1) to remove the phrase "failure to abate."

17. Decision on Rules for which the Director Deferred a Decision in the December 11, 1989, Final Rule Federal Register Notice

Following is a discussion of individual rules for which the Director deferred decision in the December 11, 1989, final rule **Federal Register** notice (54 FR 50739, 50742; see finding No. 9). In the December 11, 1989, notice, the Director approved, with certain exceptions, Colorado's August 23, 1988, proposed amendment. In this notice, the Director is, with one exception (see item No. 17(d) below), approving the rules for which he earlier deferred decision.

(a) *Use of Explosives, Rule 4.08.5(11).* Colorado proposes Rule 4.08.5(11) which now requires that records of each blast contain the total weight of explosives used per hole and the maximum weight of explosives detonated during any 8-millisecond period. The Director finds that Colorado's proposed Rule 4.08.5(11) is no less effective than the Federal regulations at 30 CFR 816.68(k) and 817.68(k). The Director approves Colorado's proposed Rule 4.08.5(11).

(b) *Diversions, Rule 4.05.4(2)(b).* Colorado proposes Rule 4.05.4(2)(b) which now requires that the capacity of the diversion channel itself shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion. The Director finds that Colorado's proposed Rule 4.05.4(2)(b) is no less effective than the Federal regulations at 30 CFR 816.43(b)(2) and 817.43(b)(2). The Director approves Colorado's proposed Rule 4.05.4(2)(b).

(c) *Siltation Structures and Impoundments, Rules 1.04(64), 4.06.6(13), and 4.05.9(13).*

(1) *Rule 1.04(64).* Colorado proposes Rule 1.04(64) that is substantively identical to OSM's definition of "impoundments" at 30 CFR 701.5. The Director is approving the proposed definition of "impoundment" at Rule 1.04(64) (see finding No. 3 above). Colorado proposes to incorporate in its proposed definition of sedimentation pond at Rule 1.04(115) the requirement that sedimentation ponds must be designed in accordance with Rule 4.05.9. The Director is approving the proposed definition "sedimentation pond" at Rule 1.04(115) (see finding No. 5).

(2) *Rule 4.05.6(13).* Colorado proposes Rule 4.05.6(13) (previously codified as Rule 4.06.6(10)) which now requires that all ponds and impoundments be examined on at least a quarterly basis for structural weakness, erosion, and other hazardous conditions. The Director finds that proposed Rule 4.05.6(13) is no less effective than the Federal regulations at 30 CFR 816.49(a)(11) and 817.49(a)(11). The Director approves Colorado's proposed Rule 4.05.6(13).

(3) *Rules 4.05.9(13) and (13)(c).* Colorado proposes Rules 4.05.9(13) (previously codified as Rule 4.05.9(11)) and 4.05.9(13)(c) which now require that impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3, and that other impoundments, not subject to 30 CFR 77.216–3, be examined at least quarterly. The Director finds that Colorado's proposed Rules 4.05.9(13) and (13)(c) are no less effective than the Federal regulations at 30 CFR 816.49(a)(11) and 817.49(a)(11). The Director approves Colorado's proposed Rules 4.05.9(13) and (13)(c).

(d) *Backfilling and Grading of Previously Mined Areas, Rule 1.04(94a).* Colorado withdrew all revisions to proposed Rule 1.04(94) in response to OSM's March 15, 1990, issue letter that advised Colorado of U.S. District Judge Flannery's remand of the Federal definition of "previously mined area" at 30 CFR 701.5 (*National Wildlife Fed'n* v. *Lujan*, Nos. 87–1051, 87–1814, and 88–2788, D.D.C. Feb. 12, 1990).

Because Colorado withdrew all proposed revisions to Rule 1.04(94a) from this proposed amendment, the Director's deferral of his decision on Rule 1.04(94a) still stands. The deferral will remain in place until: (1) OSM publishes a revised Federal definition of "previously mined area" that conforms with the court's remand and notifies Colorado in accordance with 30 CFR 732.17 of the required rule revision; and (2) Colorado submits a proposed revision to Rule 1.04(94a).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), OSM solicited comments from various Federal agencies with an actual or potential interest in the Colorado program.

By letters dated August 21, 1989, and February 5 and April 20, 1990 (Administrative Record Nos. CO–462, CO–480, and CO–500), the Bureau of Mines responded that it had no objection to the proposed amendment.

By letters dated August 23, 1989, and February 23 and May 2, 1990 (Administrative Record Nos. CO–463, CO–488, and CO–502), the Bureau of Land Management responded that it had no comments.

By letter dated August 30, 1989, and telephone conversation on February 27, 1990 (Administrative Record Nos. CO–466 and CO–486), the U.S. Fish and Wildlife Service responded that it had no comments.

By letter dated August 31, 1989 (Administrative Record No. CO–467), the U.S. Army Corps of Engineers responded that it found the amendment satisfactory.

By telephone conversation on March 2, 1990 (Administrative Record No. CO–489), the State Wildlife Biologist for the Soil Conservation Service (SCS) responded that he had no comments.

By letter dated May 14, 1990 (Administrative Record No. CO–506), the State Plant Materials Specialist for the SCS suggested that in implementing proposed Rules 4.05.3, 4.05.6, 4.05.9, and 4.09.2 concerning diversions, sedimentation ponds, and impoundments, Colorado apply standards specified in various technical documents published by SCS. (Colorado's proposed Rules 4.05.9(3) (a)

and (b) incorporate SCS Technical Release No. 68, Earth Dams and Reservoirs, June, 1976, and proposed Rules 4.09.9(1) (e) and (f) incorporate SCS Public Standard 378, *Ponds*, Colorado, 1989.) Colorado's proposed rules 4.05.3, 4.05.6, and 4.05.9 contain requirements that are no less effective than the requirements in the counterpart Federal regulations. Therefore, the Director is not requiring Colorado to revise its rules in response to SCS's comments.

In addition, SCS recommended that at proposed Rule 2.02.3(1)(c)(i) Colorado require that an exploration and reclamation plan include a description of "determined wetlands." Colorado's proposed Rule 2.02.3(1)(c)(i) requires for coal exploration operations, among other things, a description of "the distribution and important habitats of fish, wildlife and plants." Therefore, consistent with SCS's comment, this would require identification of wetlands prior to exploration operations occurring. The Director is not requiring Colorado to use the specific phrase "determined wetlands" because Colorado's proposed rule contains requirements that are no less effective than the requirements in the corresponding Federal regulations at 30 CFR 772.12(b)(12).

SCS also questioned whether required plans for prime farmland at Rule 4.25 should be submitted to the Soil Conservation District where the prime farmlands are located (apparently for review and consultation). Colorado's existing Rule 2.06.6(3) for prime farmlands does require consultation with the Secretary of Agriculture before any permit is issued for areas that include prime farmlands, but it does not require that the plans be sent to the Soil Conservation District. This requirement for consultation with the Secretary of Agriculture is the same as the requirement of the Federal regulations at 30 CFR 785.17(d). Therefore, the Director is not requiring Colorado to revise its rules to require that the plan be sent to the Soil Conservation District. (Please note that 30 CFR 785.17(d) states that the Secretary of Agriculture has assigned the prime farmland responsibilities arising under SMCRA to the Chief of the SCS and that the SCS shall carry out consultation and review through the State conservationist located in each State.)

By letter dated September 6, 1989 (Administrative Record No. CO–471), the Mine Safety and Health Administration (MSHA) responded by stating that the proposed rules did not appear to conflict with the MSHA's regulations. However, by letters dated March 9 and May 29, 1990 (Administrative Record Nos. CO–493 and CO–509), MSHA commented that while the proposed rules do not conflict with the MSHA regulations, a few of the proposed rules do conflict with guidelines that MSHA follows. MSHA cited three specific instances.

First, MSHA stated that publications of the Federal Emergency Management Agency indicate that safety factor analyses of embankment dams should employ methods that assume dynamic conditions. Colorado's proposed Rule 4.05.6(11)(j) specifies a seismic safety factor of at least 1.2 for sedimentation ponds meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage. This seismic safety factor of 1.2 is based on analyses that assume pseudostatic conditions rather than dynamic conditions.

Second, MSHA stated that its guidelines permit a design storm variation between a 100-year, 6-hour event and the probable maximum flood that is based upon size and hazard classification of the individual structure to be constructed.

Third, MSHA stated that it requires that the duration of the probable maximum precipitation (PMP) event be increased to 36-hour event or longer when storage capacity of a maximum storm event is used.

With respect to the first and second comments above, MSHA cited Colorado's proposed Rule 4.11.5(3)(b) which requires that a dam constructed of or impounding coal mine waste, that meets the size or other criteria of 30 CFR 77.216(a), have sufficient storage to contain, or a combination of storage capacity and spillway capacity to safely control, the PMP of a 24-hour event or greater event as specified by Colorado.

On October 27, 1987, the Director published a final rule **Federal Register** notice promulgating Federal regulations at 30 CFR 780, 784, 816, and 817 pertaining to standards for siltation structures and impoundments. These regulations incorporate certain of MSHA's design requirements at 30 CFR part 77. Colorado has incorporated requirements for its rules that are no less effective than the requirements of the counterpart Federal regulations. Therefore, the Director is not requiring Colorado to revise its rules in response to MSHA's comments.

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

As required by 30 CFR 732.17(h)(4), OSM provided the proposed and revised amendments, which include provisions that may have an effect on historic properties, to the SHPO and the ACHP for comment. No response was received from the ACHP.

By letter dated August 31, 1989 (Administrative Record No. CO–468), the SHPO commented that Colorado's rules addressing historical and archaeological resources were satisfactory. By letter dated February 28, 1990 (Administrative Record No. CO–492), the SHPO also responded by supporting the proposed revision at Rule 2.02.3(1)(c)(i) and questioned whether the requirement for an exploration permit applicant to submit to Colorado any other information that may be required regarding eligible historic or archaeological resources meant that any such required information would be determined in consultation with the SHPO.

As explained in the preamble to the Federal regulations at 30 CFR 772.12 that were promulgated on February 10, 1987 (52 FR 4244, 4255), OSM expects that the State regulatory authority would take into consideration any comments from the SHPO and any other interested parties in determining whether additional information is needed.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment which 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.*).

By letters dated August 31, 1989, and February 26, 1990 (Administrative Record Nos. CO–470 and CO–485), EPA's headquarters and Region VIII offices, respectively, responded with no comments, and each concurred with the proposed revisions.

By letter dated July 2, 1990 (Administrative Record No. CO–511), EPA's headquarters office responded with a second letter concurring with the proposed amendment insofar as Colorado's proposed rules do not authorize instream treatment which is not allowed by the Clean Water Act. EPA raised this issue during review of a

previously-submitted Colorado amendment, dated August 23, 1988, which the Director approved on December 11, 1989. In response to EPA's concern at that time, Colorado stated, by letter dated June 28, 1989, that it follows the rules of the Colorado Department of Health, Water Quality Control Division, concerning instream treatment of wastes and stated that "instream treatment of mine wastes is not allowed" (54 FR 50739, 50743, December 11, 1989). Therefore, Colorado has satisfied EPA's concern regarding instream treatment.

EPA has granted concurrence with those provisions of the proposed amendment which relate to water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and with additional requirements, Colorado's program amendment as submitted on July 18, 1989, and revised on January 17, April 5, and May 23, 1990. The exceptions are (1) Rule 3.03.3, termination of jurisdiction; (2) Rule 4.05.9(2), temporary impoundments; (3) Rule 4.14.1(1)(e), alternative contemporaneous reclamation schedules; (4) Rules 5.02.2 (8) and (9), abandoned sites; and (5) Rule 5.04.7(1), individual civil penalties. As discussed in findings Nos. 12(b), 13, 15, and 16, the Director has determined that proposed Rules 4.05.9(2), 4.14.1(1)(e), 5.02.2 (8) and (9), and 5.04.7(1) are less effective than the Federal regulations and/or less stringent than SMCRA. He is therefore not approving them, and is requiring further regulatory program amendments. As discussed in finding No. 9, the Director is not approving but is deferring his decision on Rule 3.03.3, termination of jurisdiction. As discussed in finding No. 17(d), the Director's deferral decision for Rule 1.04(94a), definition of previously mined areas, still stands. In addition, as discussed in findings Nos. 7, 10, 11, and 12 (a) and (d), the Director is requiring that Colorado amend: Rule 2.07.5(3), confidential information; Rules 4.05.3(1)(c), (d), and (e), diversions; Rule 4.05.8(1), hydrologic protection from acid- and toxic-forming materials; and Rule 4.05.9, impoundments.

Except as noted, the Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public. However, the Director reserves the right to require further changes to these rules in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the Colorado program.

The Federal regulations at 30 CFR part 906 codifying decisions concerning the Colorado 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 alteration of an approved 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 Colorado 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 Colorado of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, this action by OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for part 906 continues to read as follows:

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

2. In § 906.15 paragraph (j) is removed, paragraphs (k) through (m) are redesignated as paragraphs (j) through (l), and a new paragraph (m) is added to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(m) With the exceptions of Rules 3.03.3, termination of jurisdiction; 4.05.9(2), temporary impoundments to the extent that temporary impoundments are limited to such impoundments created by a dam; 4.14.1(1)(e), alternative contemporaneous reclamation schedules; 5.02.2(8) and (9), abandoned sites; and 5.04.7(1), individual civil penalties to the extent that individual civil penalties are limited to those unabated violations which result in a failure to abate cessation order, the revisions to the following provisions of 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on July 18, 1989, and revised on January 17, 1990, April 5, 1990, and May 23, 1990, are approved effective January 14, 1991. (The Director is deferring his decision on Rule 3.03.3, and his deferral decision on Rule 1.04(94a) still stands.)

Administration—1.01(9)
Alluvial valley floors—2.06.8(3)(c)(i)(B)(I) and (3)(c)(ii)(B)
Permit information requirements—2.03.4; 2.03.5 (3) and (4); 2.07.7(5); and 5.03.2(1)(d)
Ownership and control—1.04(83a); and 2.07.6 (1)(b), (1)(d), (2)(h), and (10)(c)
Permitting—2.07.7(4)
Coal exploration—2.02.7(2)(a); and 4.21.4 (7) and (7)(c)
Archaeology and cultural resources—2.02.3(1)(c)(i)

Civil penalties—1.04(70a) and (153); 5.03.5 (1)(d) and (4)(e); and 5.04.7 (2), (3), and (4)
Restriction on financial interests of State employees—1.10.2(2) and 1.10.4(1)
Diversions—4.05.3(1), and (7) through (9); and 4.05.4(1) and (2)(b)
Siltation structures—4.05.6 (3)(c), (3)(d), (3)(e), (4), (5), (6), (11), (11)(i), (11)(j), (11)(k), (12), (13), and (13)(b)
Impoundments—1.04(64); 1.04(115); 4.05.9 (1)(a), (1)(e), and (1)(f); 4.05.9 (3), (3)(a), and (3)(b); and 4.05.9 (4), (5), (12), (13), and (13)(c)
Hydrologic balance protection—2.04.7(1)(a)(4); and 4.05.8 (1) and (2)
Inspection and enforcement—5.02.2(4)(b)
Use of explosives—4.08.1(3); 4.08.4(6)(c); 4.08.5(4)(c); and 4.08.5(11)
Excess spoil—4.09.1(10); and 4.09.2 (2)(a) and (3)
Coal mine waste—4.11.5 (3)(b) and (3)(d)
Backfilling and grading—4.23.2(7)
Prime farmland—4.25.1(2)
Reclamation plan—2.05.3 (4)(a)(ii)(B) and (4)(b)
Fish and wildlife—2.05.6(2)(c)

3. Section 906.16 is revised to read as follows:

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17, Colorado is required to make the following program amendments:

(a) By April 15, 1991, Colorado shall (1) amend its program to require that notice and hearing procedures for persons both seeking and opposing disclosure of confidential information be developed, (2) demonstrate to OSM that such procedures have already been adopted by Colorado and are in place, or (3) promulgate the revision at Rule 2.07.5(3) as it was submitted by Colorado and approved by OSM on December 11, 1989.

(b) By April 15, 1991, Colorado shall submit an amendment to revise Rule at 4.05.3(1) to require that all diversions be located, constructed, maintained, and/or used to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations.

(c) By April 15, 1991, Colorado shall submit an amendment to revise Rule 4.05.8(1) to require operators to identify, bury, and treat acid-forming and toxic-forming spoil and underground development waste where such spoil and waste may be detrimental to public health and safety.

(d) By April 15, 1991, Colorado shall submit an amendment to revise Rule 4.05.9 to clearly indicate that Rules 4.05.9(1)(g) and 4.05.9(4) through (13) apply to both temporary and permanent impoundments.

(e) By April 15, 1991, Colorado shall submit an amendment to revise Rule 4.05.9(2) to remove the phrase "in which the water is impounded by a dam."

(f) By April 15, 1991, Colorado shall submit an amendment to remove Rule 4.14.1(e) regarding the Divisions authority to approve alternative contemporaneous reclamation schedules.

(g) By April 15, 1991, Colorado shall submit an amendment to remove Rules 5.02.2(8) and (9) regarding the definition and inspection of abandoned sites.

(h) By April 15, 1991, Colorado shall submit an amendment to revise Rule 5.04.7(1) to remove the phrase "failure to abate."

[FR Doc. 91–783 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89-07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of request for enforcement of commission rules.

SUMMARY: The Commission by final rule published January 22, 1990 (55 FR 2071), found (under section 19(1)(b)) of the Merchant Marine Act, 1920) that unfavorable conditions existed in the foreign oceanborne trade between the United States and Ecuador with respect to the carriage of liquid bulk cargoes. In order to adjust those conditions, the Commission ordered a fee of $50,000 assessed per outbound voyage from the U.S. to Ecuador on vessels of Maritima Transligra, S.A. ("Transligra"), an Ecuadorian-flag carrier. Overseas Enterprises, Inc. now has filed a request for Commission enforcement of this final rule, alleging that Transligra continues to operate in the trade under the same operating structure as before, but apparently under a changed operating identity. The Commission by this notice solicits comments by interested persons on the request for enforcement.

DATES: Comments due on or before February 4, 1991.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Copies of the request for enforcement may be obtained from the Secretary, Federal Maritime Commission. A copy of any comments filed shall also be served on parties of record in this proceeding. A list of parties of record is available from the Office of the Secretary, (202) 523–5760.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–773 Filed 1–11–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Television Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of Television Allotments to conform the channels listed in the Table to those listed in the authorizations for those stations. This action is taken on the Commission's own motion as announced in the *Memorandum Opinion and Order* in MM Docket No. 88–526, FCC No. 90–374, adopted November 8, 1990, and released November 30, 1990.

EFFECTIVE DATE: January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, adopted December 19, 1990, and released January 4, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows: