

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-129771-04]

RIN 1545-BD49

**Guidance Under Section 951 for Determining Pro Rata Share; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to notice of proposed rulemaking that were published in the **Federal Register** on August 6, 2004 (69 FR 47822), providing guidance for determining a United States shareholder's pro rata share of a controlled foreign corporation's (CFC's) subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, previously excluded subpart F income withdrawn from foreign base company shipping operations, and amounts determined under section.

**FOR FURTHER INFORMATION CONTACT:** Jonathan A. Sambur at (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The proposed regulations that are the subject of these corrections are under section 951 (a) of the Internal Revenue Code.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking (REG-129771-04), which was the subject of FR Doc. 04-17907, is corrected as follows:

1. On page 47823, column 1, in the preamble under the caption **ADDRESSES**, remove the last sentence.

**§ 1.951-1 [Corrected]**

2. On page 47826, column 2, § 1.951-1, paragraph (e)(5)(iii), line 11, the language "distribution of earnings or profits that" is corrected to read "distribution of earnings and profits that".

**Cynthia Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).*

[FR Doc. 04-22137 Filed 9-30-04; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 906**

[CO-033-FOR]

**Colorado Regulatory Program**

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

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** We are announcing receipt of additional revisions pertaining to a previously proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The additional revisions were submitted by Colorado July 23, 2003. Colorado proposes revisions to require a weed management plan as part of the permit application, and as part of the cropland revegetation success criteria, to consider crop production for two of the last four years of the liability period, but not consider crop production prior to year nine of the liability period and with respect to annual grain crops for which the cropping cycle may incorporate a summer fallow year, two of the last four cropping years will be considered.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.d.t. October 18, 2004.

**ADDRESSES:** You may submit comments, identified by Docket No. CO-033-FOR, by any of the following methods:

- E-mail: [jffulton@osmre.gov](mailto:jffulton@osmre.gov). Include "Docket No. CO-033-FOR" in the subject line of the message;
- Mail: James F. Fulton, Chief, Denver Field Division, OSM, P.O. Box 46667, Denver, CO 80201-6667;
- Hand delivery: James F. Fulton, Chief, Denver Field Division, OSM, 1999 Broadway, Suite 3320, Denver, CO 80202-5733;
- Fax: (303) 844-1545; and
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**INSTRUCTIONS:** All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**DOCKET:** For access to the docket to review copies of the Colorado program, this amendment, and all written comments received in response to this document, you must go to the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division.

In addition, you may review a copy of the amendment during regular business hours by contacting the following individuals at their respective locations:

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, P.O. Box 46667, Denver, CO 80201-6667. (303) 844-1400, extension 1424.

David A. Berry, Coal Program Supervisor, Colorado Division of Minerals and Geology, 1313 Sherman Street Room 215, Denver, Colorado 80203. Telephone: (303) 866-3873.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, telephone: (303) 844-1400, ext. 1424, e-mail address: [jffulton@osmre.gov](mailto:jffulton@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Colorado Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Colorado Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.15, 906.16, and 906.30.

**II. Description of Proposed Amendment**

By letter dated March 27, 2003, Colorado sent us a proposed

amendment to its program pursuant to SMCRA (State Amendment Tracking System number C0-033-FOR), administrative record number C0-696-1, under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the proposed amendment in response to the letters that we sent it in accordance with 30 CFR 732.17(c) on May 7, 1986, June 9, 1987, and March 22, 1990. The amendment concerns prime farmland, revegetation, hydrology, enforcement, topsoil, historic properties, and bond release requirements. On April 4, 2003, Colorado sent us an addition to its March 27, 2003, program amendment. It amended Rule 4.15.8(3)(a); Revegetation Success Criteria.

In the June 3, 2003, **Federal Register** (68 FR 33032), we announced receipt of the March 27, 2003, proposed amendment and its April 4, 2003, addition, provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 3, 2003. We received comments from one Federal agency.

By letter dated July 23, 2003, Colorado submitted additional revisions to the amendment. These proposed revisions added a requirement for a weed management plan and revised provisions pertaining to revegetation success for cropland. We announced these revisions and provided a shortened comment period in the **Federal Register** dated November 20, 2003 (68 FR 65422).

By letters dated September 1, 2004, and September 4, 2004, the Rocky Mountain Director of Public Employees for Environmental Responsibility (PEER) requested that we reopen the comment period for the proposed amendment submitted by Colorado on July 23, 2003. PEER stated that our notice was incorrect in its explanation of the amendment and that it failed to include the full text of the amendment as required by 30 CFR 732.17(h) for shortened comment periods. With this notice, we are publishing the full text of Colorado's July 23, 2003, submission.

In its July 23, 2003, submission, Colorado proposes revisions to rule Rule 4.15.1, Weed Management Plan; Rule 4.15.9, Revegetation Success Criteria: Cropland; and Rule 1.04(78), Definition of Noxious Weeds. The full text of the proposed revision is as follows, with the bracketed language to be removed and the italicized language to be added:

Amend Rule 4.15.1 by adding (5) as follows:

*(5) Each operator shall submit a weed management plan that will become part of the permit requirements. Species to be considered shall be noxious weeds as set forth in the permit. The plan shall also address invasion of other weed species that seriously threaten the continued development of desired vegetation. Weed control methods shall also be used whenever the inhabitation of the disturbed area by weeds threatens further spread of weeds to nearby areas.*

Amend Rule 1.04(78) as follows:

“Noxious [plants] *weeds*” means species that have been included on official State or county lists of noxious [plants] *weeds*.

Amend Rule 4.15.9 as follows:

4.15.9 Revegetation Success Criteria: Cropland. For areas to be used as cropland, success of revegetation shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved standard(s). Crop production from the mined area shall not be less than that of the approved reference area or standard for [the last] two of the last four years of the [extended] liability period established in 3.02.3. *Crop production shall not be considered prior to year nine of the liability period. With respect to annual grain crops for which the cropping cycle may incorporate a summer fallow year, two of the last four cropping years will be considered.* This liability period shall commence on the date of initial planting of the crop being grown. Production shall be considered equal if it is not less than 90% of the production as determined from the reference area or approved standard with 90% statistical confidence.

### III. Public Comment Procedures

#### Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Denver Field Division.

#### Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn: SATS No. CO-033-FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844-1400, ext. 1441.

#### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

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

#### Executive Order 12866—Regulatory Planning and Review

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

#### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and

reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

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

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

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

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*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.*).

*Regulatory Flexibility Act*

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

*Small Business Regulatory Enforcement Fairness Act*

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

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

*Unfunded Mandates*

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

**List of Subjects in 30 CFR Part 906**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 2004.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. 04–22017 Filed 9–30–04; 8:45 am]

**BILLING CODE 4310–05–P**

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Part 1270**

**RIN 3095–AB40**

**Presidential Records Act Procedures**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Proposed rule.

**SUMMARY:** In response to a petition for rulemaking, NARA proposes to amend our rules concerning Presidential records to lengthen the time from 10 working days to 35 calendar days to appeal denial of access. This proposed rule will affect the public.

**DATES:** Submit comments on or before November 30, 2004.

**ADDRESSES:** NARA invites interested persons to submit comments on this proposed rule. Please include “Attn: 3095–AB40” and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-Mail: Send comments to [comments@nara.gov](mailto:comments@nara.gov). If you do not receive a confirmation that we have received your e-mail message, contact Jennifer Davis Heaps at 301–837–1850.
- Fax: Submit comments by facsimile transmission to 301–837–0319.
- Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis Heaps at 301–837–1801.

**SUPPLEMENTARY INFORMATION:** On June 4, 2004, NARA received a petition to extend the timeframe in which a person may appeal the denial of a request for access to Presidential records made under the Presidential Records Act (44 U.S.C. 2201–2207). The petitioners stated that the current timeframe of 10 working days from the date of NARA’s