Amendment to the Regulations

For the reasons stated above, part 122 of the Customs Regulations (19 CFR part 101), is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

§ 122.24 [Amended]

2. In § 122.24, the chart in paragraph (b) is amended by adding, in appropriate alphabetical order, "Douglas, Ariz." in the column headed "Location" and, on the same line, "Douglas Municipal Airport" in the column headed "Name".

Approved: August 9, 1993.

Samuel H. Banks,

Acting Commissioner of Customs.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93-20287 Filed 8-20-93; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

RIN 0960—None Assigned

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Adult Mental Disorders Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which the adult mental disorders listings in part A of appendix 1 to subpart P of part 404 will no longer be effective from August 28, 1993, to August 28, 1994. We have made no revisions in the medical criteria in those listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments received on a Notice of Proposed Rulemaking (NPRM) to update the medical criteria in those listings. When we have completed our review, any revised criteria will be published as final regulations.

EFFECTIVE DATE: This regulation is effective August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick,, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1758.

SUPPLEMENTARY INFORMATION: Regulations containing the adult mental disorders listings (50 FR 35038, August 28, 1985) included a provision that those listings would no longer be effective on August 28, 1988, unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. The Secretary extended that date to August 28, 1990 (53 FR 29878, August 9, 1988), to give us more time to determine what revisions were necessary. On October 13, 1988, we announced (53 FR 40135) a public meeting, which we held in Baltimore, Maryland on November 9–10, 1988, to receive testimony about possible necessary revisions.

On August 28, 1990, the Secretary again extended the date on which the listings would no longer be effective to August 28, 1991 (55 FR 35286). On July 18, 1991, we published an NPRM (56 FR 33130) that included proposed revisions to the adult mental disorders listings. Because those listings would no longer have been effective on August 28, 1991, the Secretary published a final regulation (56 FR 40780, August 16, 1991) to extend that date for another year, to August 28, 1992.

The NPRM public comment period closed September 16, 1991. We received over 120 letters which offered almost 600 separate comments. Because of complex issues these comments raised, preparing the final regulations has taken longer than we expected. On June 8, 1992 (57 FR 24186), the Secretary again extended the date on which the listings would no longer be effective for another year, to August 28, 1993. To ensure sufficient time to complete our necessary action to have final regulations published, we are again extending that date for another year, to August 28, 1994.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act NPRM and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of NPRM and public comment procedures on this regulation because it only extends the date on which the adult mental disorders listings will no longer be effective and makes no substantive changes to those listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, we have determined that use of public comment procedures is unnecessary under the Administrative Procedure Act.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: June 17, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 23, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

2. Appendix 1 to subpart P is amended by revising the last sentence of the sixth paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

* * * The mental disorders listings in part A (12.00) will no longer be effective on August 28, 1994, unless extended by the Secretary or revised and promulgated again.

3. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the first paragraph of 12.00 Mental Disorders to read as follows:

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1994, unless extended by the Secretary or revised and promulgated again.

* * * * *

[FR Doc. 93-20283 Filed 8-20-93; 8:45 am]

BILLING CODE 4190-29-M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 517

RIN 3141-AA05

Freedom of Information Act Procedures

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The purpose of these regulations is to describe the procedures the Commission is adopting pursuant to the Freedom of Information Act. Under the Freedom of Information Act, federal agencies must publish, in the **Federal Register**, procedures by which the public may obtain access to information compiled, created, and maintained by the agency. These regulations provide such procedures.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632-7003 ext. 34, or by facsimile at (202) 632-7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress enacted the Freedom of Information Act of 1967 (FOIA), 5 U.S.C. 552, in an effort to afford greater public access to government records. The FOIA requires federal agencies to disclose all government records requested by members of the public, except those records meeting one or more of the FOIA's nine exemptions. The FOIA places the burden on federal agencies to justify denial of access to records. It also provides rights of appeal and of judicial review of adverse agency decisions regarding access to records.

Freedom of Information Act Procedures

The purpose of these regulations is to inform the public of the procedures and policies the Commission is adopting pursuant to the FOIA. On Tuesday November 24, 1992, the Commission published proposed FOIA regulations in the **Federal Register** (57 FR 55212). In the preamble to the proposed rule, the Commission provided a discussion of the rule's provisions and invited the public to comment on the form and content of the regulations. Comments received and the Commissions responses to those comments are summarized below.

General Comments

Guidance on FOIA

The Commission recommends use of the "Freedom of Information Act Guide and Privacy Act Overview" written by the U.S. Department of Justice, to aid the public in understanding FOIA. This book contains guidance and caselaw interpreting FOIA, the nine FOIA exemptions and a discussion of issues related to confidential commercial information. The book is for sale by the Superintendent of Documents, U.S. Government Printing Office, in Washington, DC.

Interpretation of 25 U.S.C. 2716

One commenter questioned the Commission's Interpretation of 25 U.S.C. 2716(a) regarding the confidential treatment of information received under the Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 et seq. The Commenter suggested that a strict reading of the IGRA authorizes the Commission only to disclose information about possible violations to law enforcement officials. In this commenter's view, all other information received pursuant to the IGRA is confidential under section 2716(a) of the Act.

The Commission disagrees with the commenter's interpretation of section 2716(a) of the IGRA. Section 552(b)(3) of the FOIA provides, in pertinent part, that agencies need not comply with the FOIA's disclosure requirements regarding matters "* * * specifically exempted from disclosure by statute, * * * provided that such statute * * * requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue[.]" Title 25 U.S.C. 2716(a) of the IGRA requires the Commission to "preserve any and all information received pursuant to [the IGRA] as confidential pursuant to [§§ 552 (b)(4) and (b)(7) of the FOIA]." These provisions of the FOIA exempt from mandatory disclosure trade secrets and commercial or financial information (sec. 552(b)(4)), and investigatory records (subject to certain limitations) (sec. 552(b)(7)).

The Commission interprets section 2716(a) of the IGRA to remove from the Commission the discretion it would otherwise have to disclose information that falls within the cited exemptions of the FOIA. The Commission does not interpret, however, the IGRA to make all information the Commission receives exempt from disclosure.

To deny public access to all records received under the IGRA would frustrate the purposes of FOIA. The basic purpose of FOIA is to provide greater public access to government records. The underlying theme of FOIA is mandatory disclosure of federal agency records. The Supreme Court, in a leading FOIA case, found "[t]he basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB* v. *Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The Commission believes its interpretation of section 2716(a) of the IGRA clearly follows the purposes of FOIA without sacrificing the privacy interests of Indian gaming operations. In the view of the Commission, section 2716(a) removes the Commission's discretion to disclose information falling under exemptions (b)(4) and (b)(7) of the FOIA, but does not make all information received under the IGRA exempt from disclosure.

Notice of Submitters of Information

One commenter argued that the Commission should be required to provide a submitter of information with notice of any FOIA request concerning the information submitted.

The Commission disagrees with this commenter. Under FOIA, federal agencies are not required to provide notice to submitters of information when that information is requested.

Pursuant to Executive Order 12600, however, federal agencies are required to provide notice to submitters of information that is arguably confidential commercial information. This requirement is implemented in § 517.5 (discussed below). The Commission believes that the commenter's interpretation is without legal foundation and would unduly burden the Commission by requiring the Commission to provide notice to submitters of information each time a request is made under FOIA.

Section 517.2—Definitions

The Commission has revised the definitions section to alphabetize the defined terms.

Duplication

One commenter suggested inserting commas around the phrase "* * * among other things * * *" in the definition of *duplication*. The Commission agrees and has revised section § 517.2(d) accordingly.

Non-Commercial Scientific Institution

One commenter suggested including a definition of "commercial" since that term is used in the definition of *non-commercial scientific institution*. The Commission has revised § 517.2 to refer to the definition of *commercial* as that term is used in the definition of *commercial-use requester*.

Requester

One commenter suggested revising the definition of *requester* to include the term "entity.'

The Commission disagrees with the commenter. The current definition includes a description of all types of entities and therefore need not be revised to include the term "entity." The Commission has, however, revised the definition to include Indian tribes within the definition of *reqester*.

Requests for Records—§ 517.3

One commenter suggested revising § 517.3(a), Form of requests, to include the italicized language:

> "[I]f a waiver or reduction of fees seems appropriate, *a statement of* the reasons for such waiver or reduction."

The Commission disagrees. The italicized language is redundant and thus unnecessary. The Commission believes that the section clearly describes the information necessary in FOIA requests, including information necessary for fee waivers or reductions.

Disclosure of Requested Records

One commenter suggested revising § 517.4(a)(3), Disclosure of requested records, to follow the language of the FOIA.

The Commission agrees and has revised that section to include the italicized language.

> "[R]ecords specifically exempted from disclosure by statute *(other than 5 U.S.C. § 552(b))* provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue * * *[.]"

The same commenter suggested omitting § 517.4(c) because it gives the FOIA Officer discretion concerning disclosure under the nine FOIA exemptions.

The Commission disagrees with the commenter. The basic theme throughout the FOIA is mandatory *disclosure*. This objective, set forth in 5 U.S.C. 552(a), places a general obligation on federal agencies to make information available to the public. Title 5 U.S.C. 552(b), on the other hand, lists nine exemptions and states that the information contained in the exemptions is not subject to the mandatory disclosure provisions under subsection (a). In *Chrysler* v. *Brown*, 441 U.S. 281, 292 (1979), a leading FOIA case, the Supreme Court interpreted the language in subsection (b). The Court found that "[b]y its terms, subsection (b) [the exemptions] demarcates the agency's obligation to disclose; it does not foreclose disclosure." The Court went further to say that "Congress did not design the FOIA exemptions to be mandatory bars to disclosure." Also, the Department of Justice guidelines explain that the nine FOIA exemptions are discretionary, and not mandatory.

The Commission, therefore, has not omitted § 517.4(c). As previously noted, however, section 2716(a) of the IGRA, in conjunction with section 552(b)(3) of FOIA, removes from the Commission the discretion it would otherwise have to disclose information falling within the exemptions contained in sections 552 (b)(4) and (b)(7).

Confidential Commercial Information

The Commission received several comments regarding § 517.5, Confidential commercial information. In drafting this section of the regulations, the Commission closely followed Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, issued in March 1987. (3 CFR 235 (1987)). The Executive Order recognizes that submitters of arguably confidential commercial information have certain rights regarding that information. The Executive Order, therefore, requires federal agencies to give notice to submitters of such information whenever it is determined that disclosure may be necessary. Submitters are then given an opportunity to object to disclosure of the requested material. The agency must then consider the submitter's objections and determine whether disclosure is required. If the agency determines that disclosure is required, the agency must notify the submitter that the objection has not been sustained.

Two commenters found the section on confidential commercial information excessive in that it places an affirmative burden on submitters of commercial information to designate information as confidential or risk loss of confidential status.

Under Executive Order 12600, agencies are required to give notice of a request for arguably confidential commercial information under two circumstances: when a submitter has designated such information as confidential, or when the agency determines that it may be required to disclose records that could reasonably be expected to cause the submitter substantial competitive harm but are not exempt from disclosure by § 552(b)(4).

Although the Commission's regulation offers submitters of information the opportunity to designate commercial information as confidential, failure to do so would not result in a loss of the information's confidential status. The Commission must also notify submitters of arguably confidential commercial information when the Commission has reason to believe that it may be required to disclose such information.

One commenter suggested omitting the language in § 517.5(b) concerning the expiration of the designation of information after a 10-year period.

The Commission believes that 10 years is a sufficient period of time during which confidential commercial information remain designated as confidential. Executive Order 12600 requires agencies to provide notice to submitters of information received prior to 1988 whenever the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information. The Commission believes that the 10 year limit should also apply to information submitted after January 1, 1988. The Commission notes that the expiration of the designation does not result in the loss of confidential status. The Commission is still required to notify submitters of information when the Commission has reason to believe that it may be required to the disclose records.

This commenter also suggested omitting the word "obviously" from § 517.5(f)(5) where it modifies the word "frivolous." The Commission disagrees with the commenter's suggestions concerning §§ 517.5 (b) and (f)(5). The Commission drafted the sections in accordance with § 8(f) of Executive Order 12600, which contains the word "obviously."

Another commenter suggested that the Commission list certain types of information assumed to be confidential and therefore subject to nondisclosure. In the preamble to the proposed regulation, the Commission listed certain types of information believed to be exempt from disclosure. (57 FR 55212 (November 24, 1993)). Although the Commission believes it would be inappropriate to put the list in the regulations, the Commission has compiled a more complete list of information it believes would be exempt from disclosure. This list includes, but is not limited to, certain information contained in audit reports, background investigations, management contracts, independent and internal audit reports, business plans, market studies, income projections, contracts relating to the purchase of goods and services, and copies of internal accounting records.

The same commenter also questioned whether submitters of confidential information would be required to designate information previously submitted to the Commission by designating and resubmitting the information.

The Commission believes that submitters of commercial information who wish to be notified in the event of a possible disclosure may designate and resubmit information previously submitted.

Also, the same commenter suggested that §§ 517.5 (c) and (f) be revised to clarify the time limits for objecting to disclosure and providing notice of a final determination regarding disclosure. The commenter expressed concern that the 10-day initial determination period under § 517.6(a) is insufficient in circumstances involving confidential commercial information.

The Commission disagrees with the commenter. The Executive Order requires submitters of information to designate information as confidential upon submission, or a reasonable time thereafter. The Executive Order also requires the Commission to afford the submitter a reasonable period of time to object to disclosure. The Commission believes that to impose time limits on these provisions would burden not only the Commission but also submitters of information. Again, the Commission notes that it has a duty under Executive Order 12600 and also under the IGRA to withhold information falling within the FOIA exemptions governing trade secrets and commercial or financial information. The Commission notes, however, that in instances where the issue of confidential commercial information arises, the Commission will extend the 10-day initial determination period. This will allow time to comply with the procedures under § 517.6. One commenter also questioned whether the Commission should provide the submitter of confidential commercial information with an opportunity to appeal an adverse determination regarding disclosure.

The procedures set forth under FOIA and Executive Order 12600 do not provide submitters of confidential commercial information with an administrative appeal of an adverse agency determination. Several courts have held that an agency's procedures for resolving a submitter's claim of confidentiality are not inadequate simply because they do not afford the submitter a right to an evidentiary hearing. The Commission believes the procedures provided in the regulations, namely, notice to a submitter, an opportunity to object, careful consideration by the Commission of objections, and notice of the Commission's determination, are adequate procedures under FOIA and Executive Order 12600.

Fees

One commenter suggested revising the last sentence of § 517.8(d), Types of requesters, to read, "Specific levels of fees are prescribed below for each of these categories."

The Commission agrees and has made the suggested revision.

The same commenter suggested revising the last sentence of § 517.8(e), Charges for unsuccessful searches, to include the italicized language:

> "However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, *and that the requester may be charged*, fees may be charged."

The Commission disagrees with the suggested revision. The OMB Guideline regarding fee schedules published in the **Federal Register** in March 1987 (52 FR 10012), provides that agencies are entitled to charge requesters for unsuccessful searches. The Commission believes that notice to a requester of the estimated cost of the search time and that the requested records may not exist or may be withheld as exempt, is sufficient notice that a requester may be charged for an unsuccessful search.

The Commission notes that in most instances where search charges are likely to exceed $25, the FOIA Officer will notify the requester of the estimated cost unless the requester has indicated in advance a willingness to pay fees as high as those estimated by the FOIA Officer.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 et seq. The information collection requirements have been assigned the OMB control number 3141–0005. The information collection requirements have been approved for use through January 31, 1995.

National Environmental Policy Act

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the NIGC has certified to OMB that this rule meets the applicable standards provided in §§ 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 Fed. Reg. 55195, October 25, 1991.

List of Subjects in 25 CFR Part 517

Gaming, Indian lands, Reporting and recordkeeping requirements, Administrative practice and procedure.

Dated: August 16, 1993.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

For the reasons set forth in the preamble, chapter III, title 25 of the Code of Federal Regulations is proposed to be amended by adding a new part 517 to subchapter A.

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Authority: 5 U.S.C. 552.

§ 517.1 Purpose and scope.

This part contains the regulations of the National Indian Gaming Commission implementing the Freedom of Information Act (FOIA). These regulations provide procedures by which members of the public may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records.

§ 517.2 Definitions.

(a) *Commercial-use requester* means requesters seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category.

(b) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(c) *Direct costs* means those expenditures by the Commission actually incurred in searching for and duplicating records to respond to a FOIA request. Direct costs include the salary of the employee or employees performing the work (the basic rate of pay for the employee plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of and heating or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a document necessary to fulfill a FOIA request. Such copies can take the form of, among other things, paper copy, microform, audio-visual materials, or machine-readable documentation. The copies provided shall be in a form that is reasonably usable by requesters.

(e) *Educational institution* refers to a preschool, a public or private elementary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is used in § 517.2(a), commercial-use requester, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

(i) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the Commission.

(j) *Review* refers to the process of examining a record, in response to a FOIA request, to determine whether any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing of any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. *Review* does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(k) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document. The Commission shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(l) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to, corporations, Indian tribal governments, state governments and foreign governments.

(m) *Working day* means a federal workday that does not include Saturdays, Sundays or federal holidays.

§ 517.3 Requests for records.

(a) *Form of requests.* Requests for records made pursuant to the FOIA may be in writing, specifically invoke the Act, and be addressed to the FOIA Officer, Suite 250, 1850 M St., NW., Washington, DC 20036–5803. Requests may also be made in person at the same address, where records will be available for inspection on the premises. Requests for records shall describe the records requested with enough specificity to enable Commission employees to locate the information requested with a reasonable amount of effort. Requests shall also include a statement of the maximum amount of fees the requester is willing to pay to obtain the requested information, or if a waiver or reduction of fees seems appropriate, the reasons for such waiver or reduction.

(b) *Types of records not available.* The FOIA does not require the Commission to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or disposed of.

§ 517.4 Disclosure of requested records.

(a) The FOIA Officer shall make requested records available to the public to the greatest extent possible in keeping with the FOIA, except that the following records are exempt from the disclosure requirements:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign

policy and which are, in fact, properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Commission;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. § 552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or that the statute establishes particular criteria for withholding information or refers to particular types of matters to be withheld;

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a recorded or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological or geophysical information and data, including maps, concerning wells.

(b) If a requested record contains exempted material along with nonexempted material, all reasonable segregable nonexempt material shall be disclosed.

(c) The FOIA Officer may disclose requested information falling within the exemptions of paragraphs (a)(1)–(a)(3), (a)(5), (a)(6), (a)(8) and (a)(9) of this section, if to do so would further the purposes and policies of the FOIA and the IGRA. The FOIA Officer shall not disclose requested information falling within the exemptions of paragraphs (a)(4) and (a)(7) of this section.

§ 517.5. Confidential commercial information.

(a) *Notice to submitters.* The Commission shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the Commission, with prompt notice of a FOIA request or administrative appeal encompassing the confidential commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The Commission shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *When notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate, either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Opportunity to object to disclosure.* The Commission shall afford a submitter a reasonable period of time to provide the Commission with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitters claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specified disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* When a requester brings suit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the

FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date, but no opportunity to object to disclosure will be offered.

517.6 Response to requests for records.

(9) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and shall so notify the requester within ten (10) working days after receipt of the request. This 10-day period may be extended ten (10) additional working days if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly stating the reasons for the extension, and estimating when the FOIA Officer will respond. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the request, which consultation shall be conducted with all practicable speed.

(2) If the FOIA Officer decides that an initial determination cannot be reached within the time limits specified in paragraph (a)(1) of this section, he or she shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made.

(3) If no initial determination has been made at the end of the 10-day period provided in paragraph (a)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(4) If the FOIA Officer determines that another agency is responsible for responding to a request or part thereof, the FOIA Officer shall refer such request to the appropriate agency. The FOIA Officer shall inform the requester of the referral and of the name and address of the agency or agencies to which the request has been referred.

(b) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, he or she shall:

(1) Provide copies of the requested records; or

(2) Notify the requester of his or her decision, including a brief statement of when and how the records will be provided. Requested records shall then be promptly made available.

(c) *Denial of requests.* When the FOIA Officer determines that access to requested records should be denied, he or she shall notify the requester of the denial, the grounds for withholding the records, and the procedures for appeal of the denial.

§ 517.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.*

(1) *Time for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access or after the time limit for response by the FOIA Officer has expired.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial. To expedite the appellate process and give the requester an opportunity to present his or her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial to have been in error. The appeal shall be addressed to the Freedom of Information Act Appeals Officer, National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for its decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination and the right of the requester to obtain judicial review in the appropriate federal district court.

§ 517.8 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Commission in response to requests for records under this part. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Copies.* The Commission shall charge $0.10 per page for copies of documents up to 8½″ x 14″. For copies prepared by computer, the Commission will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the Commission shall charge the actual costs of producing the documents.

(2) *Searches.* (i) *Manual searches.* Whenever feasible, the Commission will charge at the salary rate (basic pay plus a percent for benefits) of the employee or employees performing the search. However, where a homogenous class of personnel is used exclusively in a search (e.g. all administrative/clerical or all professional/executive), the Commission shall charge $12.50 per hour for clerical time and $30.00 per hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The Commission will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. The Commission is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the same rates as those listed under paragraph (b)(2)(i) of this section. Review fees shall be assessed only for the initial record review, for example, review undertaken when the Commission analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraphs (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) *The subject of the request.* Whether the subject of the requested records concerns the operations or activities of the government;

(2) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to public understanding;

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) *The existence and magnitude of commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: commercial use requesters, educational and non-commercial scientific institutional requesters, representatives of the news media, and all other requesters. These terms are defined in § 517.2. Specific levels of fees are prescribed below for each of these categories.

(1) *Commercial-use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the above categories fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds $15.00, *except that* the first 100 pages and the first two hours of manual search time shall not be charged. To apply this term to computer searches, the FOIA Officer will determine the total hourly cost of operating the central processing unit and the operator's salary (plus 16 percent for benefits). When the cost of the search equals the equivalent dollar amount of two hours of the salary of the person performing the search, the FOIA Officer will begin assessing charges for the computer search.

(e) *Charges for unsuccessful searches.* Ordinarily, no charge will be assessed when requested records are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Charges for interest.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting on the 31st day following the day on which the bill was sent to the requester. A fee received by the FOIA Officer, even if not processed, will result in a stay of the accrual of interest. The Commission shall follow the provisions of the Debt Collection Act of 1982 and the implementing procedures to recover any indebtedness owed to the Commission.

(g) *Aggregating requests.* A requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the Commission reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the Commission may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment may be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed $250. When payment is required in advance of the processing of a request, the time limits prescribed in § 517.6 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee.

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed $25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than $25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requesting party an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

[FR Doc. 93–20146 Filed 8–20–93; 8:45 am]

BILLING CODE 7565-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8476]

RIN 1545–AR05

Arbitrage Restrictions on Tax-Exempt Bonds; Corrections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains technical corrections to Treasury Decision 8476, which was published in the **Federal Register** for Friday, June 18, 1993 (58 FR 33510). The final regulations relate to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments under section 103 of the Internal Revenue Code.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Scott R. Lilienthal or William P. Cejudo at 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these technical corrections provide guidance under section 148 relating to restrictions on the use of proceeds of tax-exempt State and local bonds to acquire higher yielding investments, and also provide related guidance under sections 103, 149, and 150 relating to tax-exempt bonds.

Need for Correction

As published, T.D. 8476 contains certain technical errors and ambiguities which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8476), which was the subject of FR Doc. 93–14092, is corrected as follows:

§1.103–8 [Corrected]

Paragraph 1. On page 33515, column 2, in 1.103–8, paragraph (a)(5)(i), the second sentence is corrected to read as follows:

"In addition, if the original use of the facility begins before the issue date of the bonds, the facility does not qualify under this section if any person that was a substantial user of the facility at any time during the 5-year period before the issue date or any related person to that user receives (directly or indirectly) 5 percent or more of the proceeds of the issue for the user's interest in the facility, and is a substantial user of the facility at any time during the 5-year period after the issue date, unless—

(*a*) An official intent for the facility is adopted under § 1.150–2 within 60 days after the date on which acquisition, construction, or reconstruction of that facility commenced; and

(*b*) For an acquisition, no person that is a substantial user or related person after the acquisition date was also a substantial user more than 60 days before the date on which the official intent was adopted."

§1.103–15AT [Removed]

Par. 2. On page 33515, column 3, the second line of instructional paragraph 3, the language "1.103–15, and" is removed, and the language "1.103–15, 1.103–15AT, and" is added in its place.

§1.148–1 [Corrected]

Par. 3. On page 33519, column 2, under § 1.148–1, paragraph (b), in the definition of *Sale proceeds*, a second sentence is added to read as follows:

"Sale proceeds also include, but are not limited to, amounts derived from the sale of a right that is associated with a bond, and that is described in § 1.148–4(b)(4)."

Par. 4. On page 33520, column 1, under § 1.148–1, the first and second lines of paragraph (c)(4)(i)(B)(*2*), the language "For the portion of an issue that is to be used to finance capital projects, if" is removed, and the language "For the portion of an issue (including a refunding issue) that is to be used to finance or refinance capital projects, if" is added in its place.

§1.148–2 [Corrected]

Par. 5. On page 33521, column 2, under § 1.148–2(e)(4)(i), the third and fourth lines from the bottom of the paragraph, the language "This paragraph (e)(4)" is removed, and the language "Except as provided in paragraph (e)(4)(iv) of this section, this paragraph (e)(4)" is added in its place.

Par. 6. On page 33521, column 3, under § 1.148–2, paragraph (e)(4)(iv) is added immediately after paragraph (e)(4)(iii) to read as follows:

"(iv) *Amounts re-loaned for qualified mortgage loans.* The temporary period under this paragraph (e)(4) for proceeds from the sale, prepayment, or repayment of any qualified mortgage loan that are reasonably expected to be used to make or finance new qualified mortgage loans is 3 years."

§1.148–3 [Corrected]

Par. 7. On page 33523, column 2, under § 1.148–3, paragraph (h)(4), the last two lines of the paragraph, the language *"each spending period for computation date"* is removed, and the language *"each spending period* for *computation date"* is added in its place.

§1.148–4 [Corrected]

Par. 8. On page 33526, column 3, under § 1.148–4, the second line of paragraph (d), the language *"issue to fixed yield issue.* As of the first" is removed and the language *"issue to fixed yield issue.* For purposes of determining yield under this section, as of the first" is added in its place.

Par. 9. On page 33528, column 1, under § 1.148–4, the last line of paragraph (g), the language "computed over the term of the issue" is removed, and the language "computed over the term of the issue, and paragraph (d) of this section does not apply to the issue" is added in its place.

Par. 10. On page 33529, column 2, under § 1.148–4, the third and fourth lines of paragraph (h)(4)(ii)(B), the language "for purposes of § 1.148–3," is removed, and the language "for purposes of determining yield on the hedged bonds for purposes of § 1.148–3," is added in its place.

Par. 11. On page 33529, column 2, under § 1.148–4, the first and second lines of paragraph (h)(4)(ii)(C), the language "If the swap is terminated" is removed, and the language "For purposes of determining yield on the hedged bonds for purposes of § 1.148–3, if the swap is terminated" is added in its place; and in the sixth and seventh lines of that same paragraph (h)(4)(ii)(C), the language ", for purposes of § 1.148–3," is removed.

§1.148–5 [Corrected]

Par. 12. On page 33530, column 3, under § 1.148–5, the last two lines of paragraph (c)(3)(i)(A), the language "paragraphs § 1.148–2(e)(2), (e)(3), (e)(4), or (e)(6) of this section, respectively;" is removed, and the language "§ 1.148–2(e)(2), (e)(3), (e)(4), or (e)(6), respectively;" is added in its place.

Par. 13. On page 33530, column 3, under § 1.148–5, the second and third lines of paragraph (c)(3)(i)(E), the language "in a fund that," is removed, and the language "in a reasonably required reserve or replacement fund or in a fund that," is added in its place.

Par. 14. On page 33530, column 3, under § 1.148–5, the fourth line of paragraph (c)(3)(i)(E)(*2*), the language "debt service on the issue (e.g., a reserve" is removed, and the language "debt service on the issue other than in connection with reductions in the amount required to be in that fund (e.g., a reserve" is added in its place.

§1.148–6 [Corrected]

Par. 15. On page 33532, column 3, under § 1.148–6, the fourth line of paragraph (b)(2)(i)(B)(*1*), the word "paragraphs" is removed.

Par. 16. On page 33533, column 3, under § 1.148–6, the first line of paragraph (d)(3)(ii)(A)(*1*), the language "Any qualified administrative costs" is removed, and the language "Any issuance costs of the issue or any qualified administrative costs" is added in its place.

Par. 17. On page 33533, column 3, under § 1.148–6, paragraph (d)(3)(ii)(A)(*4*), line 2, the language "sections 1.148–3" is removed, and the language "§§ 1.148–3" is added in its place.

§1.148–7 [Corrected]

Par. 18. On page 33537, column 2, under § 1.148–7, the last line of paragraph (f)(2), the language "based on actual facts." is removed, and the language "based on actual facts, except that this election does not apply for purposes of determining whether an issue is a construction issue under paragraph (f)(1) of this section if the 1½ percent penalty election is made under paragraph (k) of this section." is added in its place.

Par. 19. On page 33539, column 2, under § 1.148–7, the second line in paragraph (k)(1)(i), the language "paragraph ( )" is removed, and the language "paragraph (l)" is added in its place.

§ 1.148–9 [Corrected]

Par. 20. On page 33542, column 1, under § 1.148–9, the sixteenth through nineteenth lines of paragraph (c)(2)(i), the language "If, however, the prior issue has unspent proceeds, these allocations must be ratable both between sources for" is removed, and the language "During the period that the prior issue has unspent proceeds, however, these allocations must be ratable (with reasonable adjustments for rounding) both between sources for" is added in its place.

Par. 21. On page 33542, column 1, under § 1.148–9, the last three lines of paragraph (c)(2)(ii)(A), the language "the earliest expenditures from the mixed escrow" is removed, and the language "the earliest maturing investments in the mixed escrow" is added in its place.

Par. 22. On page 33543, column 1, under § 1.148–9, the next to the last line of paragraph (h)(1)(iv), the language "required reserve fund under section" is removed, and the language "required reserve or replacement fund under section" is added in its place.

§ 1.148–10 [Corrected]

Par. 23. On page 33545, column 1, under § 1.148–10, the first three lines of paragraph (c)(2)(vi), the language "allocable to expenditures for the governmental purpose" is removed, and the language "that will be used or maintained for the governmental purpose" is added in its place.

Par. 24. On page 33545, column 1, under § 1.148–10, the first and second lines of paragraph (c)(2)(viii), the language "in a sinking fund for" is removed, and the language "that will be used or maintained for the governmental purpose of" is added in its place.

§ 1.148–11 [Corrected]

Par. 25. On page 33547, column 2, under § 1.148–11, the seventh through ninth lines of paragraph (c)(2), the language "in connection with the issuance of a refunding issue issued during that period" is removed.

Par. 26. On page 33547, column 3, under § 1.148–11, the last line of paragraph (e), the language "on which the original bond was issued)." is removed, and the language "on which the original bond was issued), but only if § 1.148–2(d)(2)(iv) is applied by substituting *1 and one-half percentage points* for *2 percentage points*." is added in its place.

§ 1.149(d)–1 [Corrected]

Par. 27. On page 33548, column 3, under § 1.149(d)–1, the last line of paragraph (d)(1), the word "apply." is removed, and the language "apply, except that the limitation in § 1.148–9(h)(5) is disregarded." is added in its place.

§ 1.149(g)–1 [Corrected]

§ 1.150–0 [Removed]

Par. 28. On page 33549, column 2, under § 1.149(g)–1, immediately following paragraph (d), a new instructional paragraph is added to read as follows:

"Par. 9a. Section 1.150–0 is removed."

§ 1.150–1 [Corrected]

Par. 29. On page 33550, column 1, under § 1.150–1, paragraph (b), the second sentence in the definition of *Tax-exempt bond*, is corrected to read as follows:

"For purposes of section 148, tax-exempt bond includes:

(1) An interest in a regulated investment company to the extent that at least 95 percent of the income to the holder of the interest is interest that is excludable from gross income under section 103; and

(2) A certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 CFR part 344."

Par. 30. On page 33550, column 1, under § 1.150–1, seventh line of paragraph (c)(1)(i), the language "treated and sold" is removed, and the language "treated as sold" is added in its place.

§ 1.150–2 [Corrected]

Par. 31. On page 33552, column 3, under § 1.150–2, fifth line from the bottom of paragraph (g)(1), the language "obligation to reimburse an original" is removed, and the language "obligation or to reimburse an original" is added in its place.

Dale D. Goode,

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

[FR Doc. 93–20176 Filed 8–18–93; 9:49 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, submitted March 19, 1993, pertains to proposed legislative changes. One change would clarify that the time period for raising deficiencies in a mining permit pertains to non-coal permits only. A second change would specify the persons to be notified of pending coal mine permit applications. The proposed amendment revises the Wyoming program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal rules.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, Federal Register (45 FR 78684). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15 and 950.16.

II. Submission of Amendment

On March 19, 1993, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. WY–23–01). Wyoming proposes to amend the following Department of Environmental Quality (DEQ), Land Quality Division (LQD) statutes of the Environmental Quality Act, by enacting legislation in response to the required Program Amendment 30 CFR 950.16(o), to clarify that a limited period of time for raising deficiencies in a mining permit application does not apply to coal mining permit applications. A State initiative also proposes changes to Enrolled Act No. 31 which specifies persons to be notified of pending mining permit applications.

OSM published a notice in the April 6, 1993, **Federal Register** (58 FR 17811) announcing receipt of the proposed amendment and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (Administrative Record No. WY–23–10). The public comment period closed on May 6, 1993. A public hearing was not held because no one requested an opportunity to testify.

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 concerning the amendment submitted by Wyoming on March 19, 1993.

1. Time Limits for Raising Deficiencies

Wyoming proposes to amend its State statute at W.S. 35–11–406(h) by adding the phrase "for non-coal permits" to clarify that the 150-day time limit for raising deficiencies in an application does not apply to coal permit applications.

Wyoming proposed changes in response to a required program amendment at 30 CFR 950.16(o) that was placed on its program in the July 8, 1992, final **Federal Register** notice (57 FR 30121). In that rulemaking action, OSM did not agree with Wyoming's proposed revision of subsection W.S. 35–11–406(h) that, after a 150-day technical review period, would not allow the administrator to raise any item not previously specified as being deficient unless the applicant, in subsequent revisions, significantly modifies the application after a 150-day technical review period . OSM found that the proposed language could potentially prevent the administrator from considering new deficiencies identified as a result of a prolonged technical review, or during the public review process. Thus, Wyoming's program would be less stringent than SMCRA requirements at section 510(b), that require the regulatory authority to find an application accurate and complete, that it meet all requirements of the Act and State program, and that the applicant has demonstrated that reclamation required by the Act and State program can be accomplished. Wyoming must retain authority to require, at any time prior to permit approval, that the applicant correct any deficiencies.

Wyoming has elected to remedy the deficiency by adding the phrase "for non-coal permits." The will clarify that the 150-day time period for raising deficiencies does not apply to coal mining permits.

The Director is approving Wyoming's proposed change to W.S. 35–11–406(h) as being consistent with and no less effective than the Federal program requirements that place no time limit for a deficiency to be raised concerning coal mining permit applications. The required amendment at 30 CFR 950.16(o) will be removed.

2. Notification of Pending Mining Permit Applications

Wyoming proposes to amend W.S. 35–11–406(j) by modifying the subsection to more clearly specify the persons to be notified of a mining permit application in the locality of the proposed mining operation. Specifically, a copy of the application notice is to be mailed within five days after the first publication, to "all surface owners of record of the land within the permit area, to surface owners of record of immediately adjacent lands, to any surface owners within one-half (½) mile of the proposed mining site and to the operator of any oil and gas well within the permit area or, if there is no oil and gas well, to the lessee of record of any oil and gas lease within the permit area."

Section 507(b)(6) of SMCRA specifies that the permit application shall contain, among other things, a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection. No specific identification of, or requirement for, mailing the application to specific individuals is required by the Federal program.

Although Wyoming's proposed change has no direct Federal program counterpart in terms of identifying persons that a permit application should be sent to, the State's desire to do so is in accordance with Federal program requirements.

The Director is approving Wyoming's proposed modification at W.S. 35–11–406(j), to specify the persons to be notified of a mining permit application in the locality of the proposed mining operation, as being consistent with and no less effective than the Federal Program requirements for public notification.

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received. A public hearing was not held because no one requested an opportunity to testify.

2. Federal Agency Comments

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

The Geological Survey responded that no geologic factors are involved and had no suggestions to make (Administrative Record No. WY–23–04).

The Mine Safety and Health Administration (Denver, Colorado) responded that the proposed amendment appears to be relevant and satisfactory (Administrative Record No. WY–23–05).

The U.S. Forest Service, Rocky Mountain Region had no comments or concerns with the proposed rule change (Administrative Record No. WY–23–06).

The U.S. Army Corps of Engineers responded that there are no issues involved for which the Corps has responsibility for review, and referred OSM to their letter dated April 5, 1993. That letter provided the Corps' position that they would review only those amendments concerning coal mine waste impoundment structures in order to eliminate unnecessary work efforts of both agencies (Administrative Record No. WY–23–07).

The U.S. Department of Agriculture's Soil Conservation Service had no comment on the information provided for review (Administrative Record No. WY–23–08).

The Bureau of Mines, Division of Environmental Technology reviewed the amendment and had no comment (Administrative Record No. WY–23–09).

The Bureau of Land Management (Cheyenne, Wyoming) commented that the proposed changes appear to be technical adjustments to DEQ policies and programs to bring them into line with OSM regulations, and that it did not appear that the changes would affect Bureau programs (Administrative Record No. WY–23–11).

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 amendment to the SHPO and ACHP for comment. Neither agency responded with any comments.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), 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 that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.) By letter dated March 30, 1993, (Administrative Record No. WY–23–03) the OSM requested that EPA review and concur, if appropriate, with Wyoming's proposed amendment. No response was received from the EPA, and their concurrence was not required on the proposed amendment, since it did not address any requirements that would impact the Clean Water or Clean Air Acts.

V. Director's Decision

Based on the above findings, the Director approves Wyoming's proposed program amendment as submitted March 19, 1993.

The Federal regulations at 30 CFR part 950 codifying decisions concerning the Wyoming program are being amended to implement this decision. The Director is approving these statutes with the provision that they will be fully promulgated in a form identical to that submitted to and reviewed by OSM. 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.

VI. Procedural Determinations

Compliance With Executive Order 12291

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 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 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.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal 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. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 950 of the Code of Federal Regulations is amended as set forth below.

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

2. Section 950.15 is amended by adding paragraph (o) to read as follows:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(o) The following amendment to the Wyoming permanent regulatory program, as submitted to OSM on March 19, 1993, is approved effective August 23, 1993. W.S. 35–11–406(h) clarifying that the 150-day time period for raising deficiencies apply only to non-coal permits; W.S. 35–11–406(j) that specifies the persons to be notified of a pending permit application within the locality of the proposed mine site.

§ 950.16 [Amended]

3. Section 950.16 is amended to remove and reserve paragraph (o).

[FR Doc. 93–20293 Filed 8–20–93; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International