Sunshine Act Meetings

Federal Register
Vol. 57, No. 181
Thursday, September 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 22, 1992, 10 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 24, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-31: Kathy A. Magraw of LaRouche for President
Advisory Opinion 1992-35: George Cochran on behalf of Jon Khachaturian
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92-22700 Filed 9-15-92; 3:47 pm]

BILLING CODE 6715-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 8:00 a.m., Wednesday, September 23, 1992.

PLACE: Second Floor Board Room, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 2006

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate
2. Advances Regulation—Proposed Final Rule

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the August Board Minutes
2. Office of Finance (OF)
   A. Discussion of Proposed Lease
   B. FHLBank Consolidated Bond Selling Group Agreement
   C. Fourth Quarter 1992 Financing Plan
   D. Report on OF Restructuring
3. Office of Strategic Planning
   • Strategic Plan—Progress Report
4. Preliminary 1993 System Budget
5. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(9)(A)(B) of title 5 of the United States Code. 5 U.S.C. 552(b)(c)(9)(A)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92-22604 Filed 9-14-92; 4:41 pm]

BILLING CODE 6725-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 12-92—Correction

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date Time, and Subject Matter

Wednesday, September 23, 1992 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, D.C. on September 14, 1992.

Judith H. Lock,

Administrative Officer.

[FR Doc. 92-22605 Filed 9-14-92; 4:42 pm]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Board of Directors and Committee Meetings and Hearing

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors and the Board's Audit and Appropriations Committee will be held on September 26, 1992. In addition, on that date, a meeting and hearing of the Board's Reauthorization Committee will be held. The meetings will commence at 8:00 a.m., and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Audit and Appropriations Committee Meeting;
2. Reauthorization Committee Meeting and Hearing; and
3. Board of Directors Meeting.

PLACE: The Hyatt Regency Minneapolis Hotel, 1300 Nicollet Mall, The Mirage Room, Minneapolis, Minnesota 55403, (612) 370-1234.

AUDIT AND APPROPRIATIONS COMMITTEE MEETING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 14, 1992 meeting.
3. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.
4. Consideration of Status Report on the Leasing of the Corporation's Former Headquarters Office Space.
5. Consideration of Whether the Corporation's Annual Financial Audit Should be Conducted In Accordance With Generally Accepted Governmental Auditing Standards.

REAUTHORIZATION COMMITTEE MEETING AND HEARING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of August 9, 1992 Meeting.
3. Consideration of Public Comment Regarding Proposed Reauthorization Legislation for the Corporation.

4. Consideration of Proposed Reauthorization Legislation for the Legal Services Corporation.

BOARD OF DIRECTORS MEETING:

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board of Directors will consider and vote on approval of the draft minutes of the executive session held on August 10, 1992. In addition, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party. The Board of Directors will also consider a status report on several investigations from the Inspector General. Likewise, the Board of Directors will discuss the future of the Corporation's regional offices and personnel assigned to the same. Further, the Board of Directors will consider the results of the performance assessments of the Corporation's Inspector General and President. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b (c)(2), (6), (7)(C), (D) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), (f)(3), (4) and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its two reception areas, and will otherwise be available upon request.

[1] As to the Board's consideration and approval of the draft minutes of the executive session held on August 10, 1992, the closing is authorized as noted in the **Federal Register** notice corresponding to that Board meeting.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of August 10, 1992 Meeting
3. Presentations by the Honorable Allan Spear, State of Minnesota, Robert Guzy, President, Minnesota State Bar Association, Mary Schneider, Executive Director, Legal Services of NW Minnesota, and Caty Jirik, Director, First Call for Help, Minneapolis United Way, Regarding "Issues Facing Legal Services—Some Minnesota Perspectives."
4. Chairman's and Members' Reports
5. Presentations by Alan Houseman, Executive Director, and Linda Perle, Senior Staff Attorney, Center for Law and Social Policy, on Behalf of the Project Advisory Group and the National Legal Aid and Defender Association, Regarding Proposed Changes to 45 C.F.R. Parts 1607, 1609, 1610, 1611, 1612 and 1626
6. Consideration of Operations and Regulations Committee Report
7. Consideration of Office of the Inspector General Oversight Committee Report
8. Consideration of Provision for the Delivery of Legal Services Committee Report
9. Consideration of Audit and Appropriations Committee Report
   a. Consideration of and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget
   b. Consideration of the Method to be Proposed to Congress to Incorporate 1990 Census Data in Making 1993 Grants
10. Consideration of Reauthorization Committee Report
11. Consideration of Adoption of Proposed Guidelines for the Conduct of the Corporation's Annual Financial Audit
12. Consideration of Status Report on Efforts to Retain an Independent Insurance Consultant for the Corporation
13. Consideration of Disposition of the Corporation's Regional Offices
14. President's Report
15. Inspector General's Report

CLOSED SESSION:

16. Consideration of Results of Annual Assessments of the Job Performance of the Corporation's:
    a. President; and
    b. Inspector General.

CLOSED SESSION: (Continued)

17. Consideration of the Inspector General's Report on Several On-going Investigations Involving Allegations of Violations of Criminal Laws
18. Consideration of the Disposition of the Corporation's Regional Offices and Regional Office Personnel
19. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party
20. Approval of Minutes of Executive Session Held on August 10, 1992

OPEN SESSION: (Resumed)

21. Consideration of Other Business

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8896.

Date Issued: September 14, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–22610 Filed 9–14–92; 4:52 pm]

BILLING CODE 7050–01–M

Corrections

Federal Register
Vol. 57, No. 181
Thursday, September 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Environmental Restoration and Waste Management Advisory Committee (EMAC); Open Meeting

Correction

In notice document 92–21986 beginning on page 41737 in the issue of Friday, September 11, 1992, make the following corrections:

1. On page 41738, in the first column, under **TENTATIVE AGENDA**, under Wednesday, September 30, 1992, the eighth line reading "12Noon Lunch" should be removed.

2. On the same page, in the second column, the signature reading "J. Robert Frank" should read "J. Robert Franklin".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

[Project Nos. 710–000, et al.]

Hydroelectric Applications (Wisconsin Power and Light Company, et al.); Applications

Correction

In notice document 92–21520 beginning on page 40900 in the issue of Tuesday, September 8, 1992, make the following correction:

On page 40902, in the second column, in the first line, "b. *Project No.*: 2581–003." should read "b. *Project No.*: 2581–002."

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Revised Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1993

Correction

In notice document 92–19024 beginning on page 35829 in the issue of Tuesday, August 11, 1992, make the following correction:

1. On page 35830, in the second column of the table, in the entry for Kentucky, "1,214,052" should read "1,217,052".

2. On the same page, in the third column, in the signature, "Deborah" was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 91P–0090/CP]

Evaporated Milk; Proposed Amendment of the Standard of Identity

Correction

In the issue of Friday, August 21, 1992, on page 38095, in the second column, in the correction of proposed rule 92–17182, in correction 3., in the last line, "ADBI". should read "ADPI".

BILLING CODE 1505–01–D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1321

[Ex Parte No. MC–208]

Nonoperating Motor Carriers—Collection of Undercharges

Correction

In rule document 92–21536 beginning on page 40857 in the issue of Tuesday, September 8, 1992, make the following correction:

On page 40857, in the second column, in the table of contents, in § 1321.5, "of" should read "to".

BILLING CODE 1505–01–D

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32136]

William E. Gardner and Railroad Acquisition Corporation—Control Exemption—Wisconsin & Calumet Railroad Co., Inc.

Correction

In notice document 92–21537 appearing on page 40923 in the issue of Tuesday, September 8, 1992, the finance docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92–85]

Theatrical Effects, Works of Art and Other Articles for Temporary or Permanent Exhibition

Correction

In rule document 92–21279 beginning on page 40604 in the issue of Friday, September 4, 1992, make the following correction:

On page 40604, in the second column, in the **EFFECTIVE DATE:**, "August 4, 1992." should read "September 4, 1992."

BILLING CODE 1505–01–D

federal register

Thursday
September 17, 1992

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 110

Interagency Hazardous Materials; Public Sector Training and Planning Grants; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 110

[Docket No. HM-209; Amdt. No. 110-1]

RIN 2137-AC09

Interagency Hazardous Materials Public Sector Training and Planning Grants

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements a reimbursable grant program to enhance existing State, Indian tribal, and local hazardous materials emergency preparedness and response programs. This final rule sets forth application procedures for the planning and training grant programs established by the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), for grants to States for emergency response planning and to States and Indian tribes for emergency response training. This rule sets forth procedures for the reimbursable grant program, and provides the application requirements for specific public sector training and planning grants. The requirements adopted under this final rule are intended to: increase State, local, and Indian tribal effectiveness in safely and efficiently handling hazardous materials accidents and incidents; enhance implementation of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA); and encourage a comprehensive approach to emergency planning and training by incorporating response to transportation situations.

DATES: The effective date of the final rule is October 19, 1992. Grant applications will be accepted after that date. Initial awards will be made after November 15, 1992.

FOR FURTHER INFORMATION CONTACT: Charles Rogoff, HMTUSA Grants Manager, Office of the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone: 202-366-4900.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Hazardous Materials Transportation Uniform Safety Act of 1990

The HMTA (49 App. U.S.C. 1801 *et seq.*), as amended by HMTUSA, gives the Secretary of Transportation the regulatory authority to strengthen interagency coordination and technical assistance with respect to hazardous materials emergency response planning and training. Section 17 of HMTUSA added a new Section 117A to the HMTA entitled, "Public Sector Training and Planning". Section 117A of the HMTA creates a reimbursable grant program to provide financial and technical assistance, national direction, and guidance to enhance State and local hazardous materials emergency planning and training, and enhance overall implementation of EPCRA.

Section 117A of the HMTA requires the Secretary of Transportation to make grants to States for: Developing, improving, and implementing emergency response plans under EPCRA, including the determination of flow patterns of hazardous materials within a State and between a State and another State; and determining the need for regional hazardous materials response teams. Section 117A of the HMTA also requires the Secretary to make grants to States and to Indian tribes for training public sector employees to respond to accidents and incidents involving hazardous materials. The grant programs will increase the emphasis on transportation in ongoing efforts to improve the capability of communities to plan for and respond to the full range of potential risks posed by accidents and incidents involving hazardous materials.

This reimbursable grant program is supported by fees collected pursuant to section 117A(h) of the HMTA. Section 106 of the HMTA establishes a registration program for shippers and carriers of certain hazardous materials. On July 9, 1992, a final rule was published in the **Federal Register** [57 FR 30620] establishing a program to assess and collect from all persons who are required to be registered an annual fee to fund this reimbursable grant program.

B. The Notice of Proposed Rulemaking (NPRM)

On March 2, 1992, a notice of proposed rulemaking (NPRM; 57 FR 7474) was published in the **Federal Register** which contained requirements for two separate grant programs authorized by the HMTA, as amended by HMTUSA. The NPRM proposed to provide financial assistance to States for emergency response planning, and to States and Indian tribes for training public sector employees to respond to hazardous materials incidents. Many of the activities eligible for funding under the two programs are closely related. Section 117A of the HMTA does not provide authority to include Indian tribes in the planning grant program. The NPRM contained requirements for reimbursement of the costs of activities that are conducted under the grant program. The purpose of the grants is to increase State, local and Indian tribal effectiveness in safely and efficiently handling hazardous materials incidents, and to enhance implementation of EPCRA.

Implementing guidance, which addresses such issues as allocation criteria, measures against which grant applications will be evaluated, explanation of certifications required, and relationship of the grant program to the national curriculum, is in development. This guidance will be included in an application package which will be provided to potential applicants following publication of this final rule.

II. Discussion of Comments Received on the NPRM

RSPA received over 150 comments in response to the NPRM. Comments were received from a variety of sources, including Members of Congress, State Governors, Indian tribal organizations, State and local fire and police departments, State and local emergency response planning councils, committees and agencies, Federal and State environmental agencies and commissions, other Federal, State and local government agencies, trade associations, transportation companies, and colleges and universities. The majority of the commenters supported the intent of the grants program to assist State and local governments with financial and technical assistance to develop and implement emergency response plans, and to provide training to public sector employees responding to hazardous materials emergencies, particularly those involving transportation. Several commenters opposed implementation of the grant programs for various reasons. A discussion of the comments and the actions being taken by RSPA in this final rule follows.

Regulatory review comments. In response to the President's January 28, 1992 announcement of a federal regulatory review, DOT published a notice on February 7, 1992, [57 FR 4744] soliciting public comments on the

Department's regulatory programs. In response to that notice, RSPA received one comment from the National Association of State Title III Program Officials (NASTTPO) on the proposed financial and technical assistance to States and Indian tribes with respect to hazardous materials emergency response planning and training grants. NASTTPO urged adoption of the final rule as soon as possible.

Major Issues

A. Reimbursable Grants

A number of commenters objected to a "reimbursable grant" program, and favored "up-front" money, or funding advances to fund the grant programs. Most of the State and local emergency response and planning organizations are opposed to the reimbursable grant procedure due to economic conditions in their States. They urged RSPA to recognize the tight budgets under which they believe most States and local governments operate. Many commenters believe it will be difficult, if not impossible, to find funds for the cost of any program conducted under the planning or training grants, and that it will be a hardship on rural States because the emergency response personnel in many of these communities are volunteers with little or no working funds. The commenters believe requiring States to fund project costs may preclude many States from participating in the award program. The State of Nebraska, Military Department, stated that, if this must be a reimbursable grant program, some up-front administrative funds should be provided so the states can implement the program and then start into the reimbursable portion. The commenters requested that RSPA promote participation in the areas with the greatest need, and develop a funding mechanism to provide federal grant funds or portions thereof in advance, rather than by reimbursement.

RSPA understands the concerns of the State and local governments and their need, at a minimum, for available start-up funds. RSPA believes that the language under HMTUSA relative to reimbursement allows advances to be made to States for emergency response planning programs, and States and Indian tribes for public sector emergency response training programs, provided the advances are consistent with the administrative requirements and grant procedures found in 49 CFR part 18. Therefore, the final rule provides that the Associate Administrator for Hazardous Materials Safety may make advances or provide working capital on a case-by-case basis to a State or Indian tribe. Accordingly, a new paragraph (c) regarding advance funds is added to § 110.70, financial administration.

Several commenters opposed the planning and training grants program because they believe that the economic benefit to units of local government would be minimal under the grant programs, and that there is little, if anything, to be gained by providing financial and technical assistance, particularly to Local Emergency Planning Committees (LEPCs).

RSPA disagrees with the commenters that completely oppose the planning and training grant programs. The financial and technical assistance provided under the grant programs will increase the emphasis on emergency planning related to hazardous materials moving in transportation, and improve the capability of local jurisdictions to plan for and respond to potential risks posed by hazardous materials in transportation, as well as at fixed sites.

B. Non-Federal Cost-Share

As specified in section 117A(d) of the HMTA, RSPA proposed that a recipient provide 20 percent of the direct and indirect costs of all activities covered by the grant award, and that a recipient be prohibited from using funds expended to qualify for the grant for cost-sharing purposes. RSPA specifically requested comments on whether to accept in-kind contributions under non-federal cost-share requirements, and if so, what types.

Many commenters favored in-kind (soft-match) contributions rather than cash (hard-match) as the required 20 percent match. Several commenters pointed out that, although the NPRM proposed to require that States and Indian tribes satisfy the cost-sharing requirement with cash, there was no stipulation in HMTUSA that the non-Federal cost share be in cash. The commenters recommended that the 20% match be allowed through either cash contributions or in-kind contributions to produce a viable program.

The Arizona Emergency Response Commission (AERC) stated that most federal grant programs, e.g., the SARA Title III training grants program, utilize "in-kind" contributions. The AERC believes it would be difficult to obtain State appropriations to satisfy cost-share requirements, especially since the State has funded a state hazardous materials training and hazardous materials emergency management program for the past five years. The AERC recommended that cost-share requirements be authorized to be satisfied with "in-kind" contributions. Many commenters believed that using existing management, support personnel, and equipment and facilities would be more cost-effective, rather than using Federal funding for new hiring, acquisition, and construction specifically for the grant award program activities.

HMTUSA did not stipulate that a hard-match was required for meeting the non-Federal cost-share requirement. An accommodative matching funds policy is appropriate to address State budget pressures and encourage participation. Accordingly, the provision for cost sharing (§ 110.60) for planning and training grants is revised to allow for either cash (hard-match) or in-kind (soft-match) contributions, or a combination of a hard and soft match. Contributions for matching or cost-sharing purposes must comply with 49 CFR part 18. A soft-match for cost sharing purposes could be, for example, the dollar equivalent value used for technical staff to support the planning effort. This should alleviate some of the most serious funding problems, and provide more opportunities for States and Indian tribes to participate in the program.

c. Allocation Criteria

Section 117A(b)(7) of the HMTA contains criteria for allocating training funds, based on need. There is no comparable provision for allocating planning funds. RSPA proposed to use the same criteria for allocating training funds, to the extent practicable, to allocate planning funds. RSPA requested comments on the factors that should be considered as allocation criteria.

The U.S. Environmental Protection Agency (EPA) recommended that a portion of the grants should be set aside for Indian tribes, and that the State allocation factors should include objective criteria, such as population, hazardous materials facilities, etc., and criteria based on performance, compliance and innovation. The EPA stated that the latter factor should be reviewed by the Interagency Coordinating Group (representing seven Federal agencies, including, EPA, DOL/OSHA, DHHS/NIEHS, and DOT), and allocation criteria should be based in part on information from the monitoring and technical assistance functions carried out in the field. RSPA concurs with EPA on this issue as it pertains to training grants, and the Interagency Coordinating Group is currently working to fully develop objective allocation criteria. The restriction on allocation of planning grants to Indian tribes is discussed in paragraph D.

One commenter stated that the proposed training grant program fails, in allocating grant funds, to place sufficient emphasis on the needs of the entity seeking funds. The commenter went on to suggest that needs-based tests should be determined through a comprehensive cost-benefit analysis of each proposed project. In HMTUSA, one of the stated findings of the Congress is "* * * 1,500,000 emergency response personnel need better basic or advanced training for responding to the unintentional release of hazardous materials * * *" RSPA agrees that there is a clear need for training of emergency response personnel. In addition, RSPA anticipates that the most needy projects will be clearly identified through hazard-specific information which must be provided by an applicant and considered in the grant award process. Therefore, applicants are not required to submit a cost-benefit analysis.

Commenters were concerned that funds be distributed fairly. Several commenters stated that the allocation criteria specified in the NPRM are vague, that the factors should be heavily weighted with regard to need, and that the list of criteria proposed to be used excludes the most needy States. In addition to the allocation criteria proposed in the NPRM, several commenters proposed other criteria, including: population within a given State Emergency Response Commission's (SERC) or Local Emergency Planning Committees' (LEPC) jurisdictional area, as appropriate; equal division of funds on a per capita basis; State or local population density; whether a municipality has a dedicated hazardous materials response team; a system that would more closely match potential risk with available resources; the ratio of volunteer responders to paid responders; natural and cultural resources at risk; and degree of hazard or risk of the hazardous material moving in transportation. Generally, most commenters urged flexibility as the guiding principle in allocating funds, and recognition of the differences between the States.

RSPA will consider several factors in allocating funds. Some factors under review are the number of hazardous materials facilities, types and amounts of hazardous materials transported, population at risk, frequency and number of incidents recorded in past years, high mileage transportation corridors, whether the State or Indian tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials. RSPA will use these factors to the extent practicable in allocating both planning and training funds.

One commenter suggested that the rule should specifically prohibit the award of a grant in instances where there is no clear demonstration that State-levied hazardous materials fees are being used as required by HMTUSA section 13(b). Section 110.30(a)(4) of this final rule requires applicants to provide information on the assessment, collection and disposition of State, local or Indian tribe imposed fees on the transportation of hazardous materials. RSPA is sensitive to the issue raised by this commenter and will carefully consider that information in its grants-review process. However, it is not necessary to revise the rule in the manner suggested by the commenter.

Section 117A(a)(3) of the HMTA requires that not less than 75 percent of planning grant funds be made available to State LEPCs. The Texas Division of Emergency Management stated that RSPA must recognize and incorporate state emergency planning concepts and requirements in the certification process. In Texas, the LEPCs do not generate plans. Rather, that is a function of counties and cities. Also, most of those LEPCs lack the fiscal infrastructure to adequately control public funds. The commenter suggested that the rule be revised to also permit authorized agents of LEPCs to be identified as the legal subgrantee designated to receive and expend funds on behalf of the LEPC to meet the intent of the law. RSPA recognizes that many LEPCs depend on associated organizations for administrative support. Therefore, RSPA will accept planning grant applications which adequately demonstrate that, in lieu of direct LEPC funding, funds are provided for LEPC-directed projects.

D. Exclusion of Indian Tribes From Planning Grant Program

Several commenters, including some Indian tribes, recommended that Indian tribes be included in the planning grant program. The commenters believe that funding training without providing funds for planning will prevent effective implementation of emergency response preparedness programs, which could create an incomplete response capability.

Section 117A(a)(1) of the HMTA specifies that the Secretary shall make grants to the States and makes no reference to Indian tribes, in contrast to section 117A(a)(2), which explicitly provides for training grants to both States and Indian tribes. The two terms are defined in section 103 of the HMTA. Therefore, RSPA does not have the authority to make planning grants to Indian tribes.

E. Maintenance of Effort Requirement

Some commenters were concerned that the proposed requirement for a recipient to maintain expenditures at a level not less than the average level of its expenditures for the last two fiscal years, coupled with the proposed requirement for a 20 percent matching share, would make it difficult for States and Indian tribes to qualify for grants. Most commenters favor relaxation of the two-fiscal year aggregate funding requirements.

Section 117A of the HMTA requires that a State or Indian tribe certify its maintenance of a certain expenditure level in order to receive a grant. Therefore, RSPA does not have discretion in this matter. However, RSPA is providing some flexibility in this final rule by allowing in-kind (soft match) contributions.

F. National Curriculum

A National Curriculum is being developed for use in training public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials. Although several commenters opposed the development of the National Curriculum, the HMTA requires that grant recipients certify that they will use it.

One commenter was concerned that development of the National Curriculum will not give adequate consideration to current training programs and courses conducted at the State or local level, and that the Federal Government's development of a National Curriculum may delay the award of training grants. RSPA acknowledges that development of a National Curriculum will require a considerable amount of time as fields of study and candidate courses are reviewed and evaluated. However, we anticipate a significant number of those candidate courses will come from current State and local emergency response training programs. Additional guidance in this matter will be included with implementing instructions which RSPA will forward to grant applicants and, upon request, to other interested persons.

G. Grant Mechanism and Administrative Requirements

Several commenters opposed the use of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State

and Local Governments". RSPA proposed that recipients of planning or training grants comply with 49 CFR part 18, and other DOT regulations incorporated by reference in 49 CFR part 18.

Several commenters stated that the proposed grant application process ignores an existing grant application and management system, Federal Emergency Management Agency's (FEMA) Comprehensive Cooperative Agreement (CCA) system. These commenters believe that it would be a duplication of effort to establish and maintain a separate grant system for HMTA grants. They stated that the proposed grant mechanism and administrative requirements impose a significant administrative burden which could more readily be assimilated under FEMA's CCA process.

Although there are many positive features in the existing CCA process, RSPA identified a number of areas where the CCA process would not meet program needs. Although some of these areas could be adjusted to accommodate legal or program requirements, such as the proposed use of multi-year scopes of work, others could not be changed without compromising the CCA structure itself. RSPA had to determine whether the CCA process, which serves over 26 established programs, would easily accommodate RSPA's grant programs, or whether another process was needed to fully meet RSPA's legal and programmatic requirements. Another factor RSPA considered was its commitment to low cost grant administration with minimal oversight of State or Indian tribal program management.

Under the CCA structure, RSPA review and participation would have to be completed before negotiations began. All negotiations on grant awards would be performed by FEMA Regional Directors within a predetermined time frame to coincide with the regional discussions with the State agencies on other components of the CCA. RSPA participation in that process would jeopardize the schedule for award of the other CCA grants. Therefore, RSPA determined that the CCA process would not be responsive to RSPA's legal and programmatic requirements and has decided to retain management of the grant programs within the Department of Transportation. To minimize duplication and to ensure efficient administration, RSPA will utilize a small staff in anticipation of continuing support from existing FEMA and EPA hazardous materials staff in headquarters and the regions.

III. Key Features of the Reimbursable Grant Program and Discussion of Additional Related Comments

A. The Planning Grant Program

Planning grants may be made to reimburse States for: (1) Developing, improving, and implementing emergency plans under EPCRA; (2) determining the flow patterns of hazardous materials within a State and between a State and another State; and (3) determining the need for regional hazardous materials emergency response teams.

To qualify for a planning grant, a State must: (1) Certify that it is complying with Sections 301 and 303 of EPCRA; (2) certify that it will maintain the aggregate expenditure of funds for its last two fiscal years for developing, improving, and implementing emergency plans under EPCRA; and (3) agree to make at least 75 percent of the Federal funds provided available to LEPCs established pursuant to section 301(c) of EPCRA.

B. The Training Grant Program

Training grants may be made to reimburse States and Indian tribes for training public sector employees to respond to emergencies involving hazardous materials. The term "public sector employee," as defined in HMTUSA, is not repeated in this rulemaking. However, that definition is applicable to the term in each instance that it appears in part 110, as well as subsequent guidance documents issued by the HMTUSA Grants Manager. Several commenters suggested that the term be added to § 110.20 (Definitions), and one commenter wanted the definition expanded to specifically include State Troopers and Emergency Medical Service (EMS) personnel. The definition is broad and applies to all categories of public sector personnel routinely called upon to assist in emergency response activities. Thus, State Troopers and EMS personnel are public sector employees.

To qualify for a training grant, a State must: (1) Certify that it is complying with sections 301 and 303 of the EPCRA; (2) certify that it will maintain the aggregate expenditure of funds for its last two fiscal years for training public sector employees to respond to accidents and incidents involving hazardous materials; (3) agree to make at least 75 percent of the Federal funds provided available for the purpose of training such employees either employed or used by political subdivisions; and (4) agree to use courses consistent with the National Curriculum developed under section 117A(g).

To qualify for a training grant, an Indian tribe must: certify that it will maintain the aggregate expenditure of funds for each of its last two fiscal years for training public sector employees to respond to accidents and incidents involving hazardous materials; and agree to use courses consistent with the National Curriculum.

C. Relationship to the EPCRA

Section 117A(a)(1) of the HMTA requires RSPA to provide financial assistance to States for emergency response planning called for under EPCRA. States, in turn, are required to make at least 75 percent of the Federal funds available to LEPCs. A State may not receive a planning or training grant unless it certifies compliance with sections 301 and 303 of EPCRA. RSPA will accept self-certification of a State's current status and progress in achieving compliance.

RSPA is requiring, with respect to section 301, that an applicant certify that a SERC has been established, emergency planning districts have been designated, and LEPCs have been appointed by the SERC. The applicant must describe the status of the LEPCs' emergency response plans and their compliance with EPCRA section 303. Section 117A of the HMTA does not require Indian tribes to make these assurances.

D. Financial Issues

This final rule requires the States to make available (pass-through) 75 percent of the planning funds to LEPCs, and at least 75 percent of the benefits for training public sector employees employed or used by the political subdivisions. HMTA does not require Indian tribes to make this assurance for training purposes. States may pass-through funding to a local political subdivision for training public sector employees. If a State elects to conduct training itself, assurances must be provided that the training will in fact benefit public sector employees at the local level.

States and Indian tribes must contribute a matching share to any grant awarded. The cost-share requirement for both planning and training is 20 percent. RSPA will allow States and Indian tribes to satisfy the cost-sharing requirement with approved third party in-kind contributions consistent with 49 CFR 18.24. Funds may be used to carry out activities eligible for funding as specified in 49 CFR 110.40. Procurement

of operational equipment to be used in response actions is excluded from consideration for funding under this grant program.

Several commenters were concerned that the restriction on procurement of operational equipment may be too narrowly interpreted. They recommended that RSPA specifically identify expendable materials and equipment that may be procured in support of planning and training projects. The final rule is not revised to reflect that level of detail in activities eligible for funding. However, RSPA clearly recognizes that it must permit procurements of a variety of planning and training aids required to achieve basic goals and objectives of most projects funded under this grant program. The restriction applies to the procurement of operational equipment that is intended primarily for use in actual emergencies.

RSPA expects to make the first round of funding decisions in December 1992. Thereafter, decisions will be made on all applications pending in RSPA on January and July 1st of each year. Decisions on grant awards will be made within a reasonable time of receipt of grant application. RSPA will receive and review applications and make grant awards from its Washington, D.C. offices. Preapplication support, including assistance from other cooperating Federal agencies, will commence on the date this final rule is published.

IV. Role of Other Federal Agencies in the Implementation of Section 117A of HMTA.

RSPA holds delegated authority for administering the grant program. Representatives of the EPA and FEMA will assist RSPA in reviewing planning and training grant applications.

FEMA, in coordination with DOT, EPA, DOE, and NIEHS, will monitor public sector emergency response training and planning for accidents and incidents involving hazardous materials. These same agencies will provide technical assistance to States, political subdivisions and Indian tribes, and assist RSPA in developing and periodically updating the National Curriculum.

V. The Grant Mechanism and Administrative Requirements

Federal agencies collectively issued the "common rule". The Office of Management and Budget (OMB) issued a revised OMB Circular A–102 that provided guidance to Federal agencies in the development of the "common rule". DOT implemented the "common rule" through 49 CFR part 18, establishing uniform and administrative rules for Federal grants and cooperative agreements to State, local and Indian tribal governments.

RSPA is required to comply with these administrative and procedural requirements. Consequently, recipients of section 117A planning and training grants must comply with the provisions under 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as well as other regulations incorporated by reference under this Part, pertaining to grants.

RSPA is encouraging submission of applications for multi-year projects from States and Indian tribes. However, an applicant may elect to apply for a grant on an annual basis for a specific project. Under the multi-year project approach, activities approved in a scope of work will be funded for one-year budget periods. Subsequent budget periods will be funded subject to availability of funds, satisfactory progress, and in accordance with the schedule of project activities authorized in the grant.

Performance reports must be submitted upon the completion of budget periods or upon completion of activities/projects for which reimbursement is being requested. Recipients must report on planning and training separately. Before proceeding with the next budget period or set of activities, recipients are required to provide a performance report.

Recipients must submit quarterly financial reports which will also be used for reimbursement. Except for advance funds, a recipient may be permitted to carry unexpended obligations from one year to the next. Carryover funds would provide recipients flexibility in the use of grant funds and, generally, expands the amount of funding which could be made available for planning and training grant programs. RSPA may reallocate resources if carryover spending authority is not used within one calendar year after receipt of grant award. Grant recipients may petition RSPA to waive non-statutory requirements that are not applicable to their circumstances.

Planning and training are two parts of a comprehensive national grant program; applicants are encouraged to request funds to conduct one or both in a single application package. RSPA will award funds for both in one award agreement. However, since both components are funded separately by a special registration fee program, RSPA has a fiduciary responsibility to obligate and account for planning and training funds separately. Recipients must rely on their own procurement methods unless they conflict with Federal laws and standards as defined in 49 CFR part 18.

VI. Section-by-Section Review

Section 110.1. This section implements a reimbursable grant program for both planning and training activities.

Section 110.5. This section prescribes requirements on the applicability of the training and planning grants, and administrative procedures.

Section 110.7. This section contains the Office of Management and Budget (OMB) control number for the information collection contained in this part.

Section 110.10. This section specifies who is eligible to apply for training and planning grants under this part.

Section 110.20. This section includes definitions of terms under part 110. For clarity, certain terms have been changed, as follows: "cost analysis" is changed to read "cost review", and "funding period" is changed to read "budget period".

Section 110.30. This section specifies grant application requirements and procedures, and includes information on where grant applications must be submitted. Also, January 1st and July 1st of each year are specified as deadlines for the filing of applications which will be considered in the semi-annual review and award process. To expedite implementation of this grant program, an initial award of grants will consider applications received on or before October 1, 1992.

Section 110.40. This section contains requirements on the types of activities which are eligible for funding under the grant programs prescribed in this Part. Several changes were made to proposed paragraph (a) in response to a comment that certain proposed activities go beyond the scope of the grant program established under HMTUSA. The changes are as follows: paragraph (a)(4) is revised by removing the words "to determine the distribution of Federal funds under the grant" since they suggest that a capabilities assessment is intended primarily to justify the awarding of a grant; paragraph (a)(5) is removed because it focused on awareness levels of the general public, rather than public sector employees; paragraph (a)(6) for planning is changed to paragraph "(a)(5)", and revised to change the reference to "RSPA" to read the "Associate Administrator for Hazardous Materials Safety"; in paragraph (a)(7) the last sentence is unnecessary and therefore deleted, and paragraph (a)(7) is changed to paragraph

"(a)(6)"; and paragraph (a)(8) is changed to paragraph "(a)(7)". Proposed paragraph (b)(6) for training has been revised to change the reference to "RSPA" to read the "Associate Administrator for Hazardous Materials Safety".

Section 110.50. This section prescribes requirements for disbursement of Federal funds. Proposed paragraph (a) of this section was changed for clarity to read: "Preaward expenditures may not be reimbursed."

Section 110.60. This section specifies requirements for cost sharing for planning and training grants under this Part. This section allows use of in-kind (soft-match) contributions for cost sharing purposes.

Section 110.70. This section prescribes requirements for financial administration and accounting procedures of the grant programs. Paragraph (c) is changed to (d), and a new paragraph (c) on advances is added to this section.

Section 110.80. This section specifies that procurement procedures must be used which reflect applicable State laws and regulations and Federal requirements under 49 CFR Part 18.

Section 110.90. This section prescribes requirements for monitoring, reports, and record retention for grant award recipients under this Part.

Section 110.100. This section specifies the requirements for enforcement of the terms of a grant award if a recipient fails to comply. In this proposed section, the reference to "RSPA" so changed to read "Associate Administrator for Hazardous Materials Safety".

Section 110.110. This section specifies after-grant requirements for closing out awards. In this proposed section, the reference to "RSPA" is changed to read "Associate Administrator for Hazardous Materials Safety".

Section 110.120. This section specifies requirements for requesting non-statutory deviations of this Part. In this proposed section, the reference to "RSPA" is changed to read "Associate Administrator for Hazardous Materials Safety." The address where requests for deviations must be submitted is added to this section.

Section 110.130. This section prescribes requirements for resolving disputes. In this proposed section, the reference to "RSPA" is changed to read "Administrator, RSPA".

VII. Rulemaking Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this final rule is not a "major rule" under Executive Order 12291. The final rule is not considered a significant rule under DOT's Regulatory Policies and Procedures ("the Procedures"; 44 FR 11034; February 26, 1979). In accordance with the Procedures, RSPA has determined that preparation of a Regulatory Evaluation is not necessary because the costs of the regulation are expected to be minimal.

B. Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

C. Executive Order 12612

The rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). The HMTA specifies that States may apply for grants if they meet certain statutory criteria. The rule will implement the statutory requirements at a minimum level. The Federal-State relationship will be enhanced as a result of the grant funding provided. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

D. Paperwork Reduction Act

The new requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) under OMB control number 2137–0586 (expiration date: May 31, 1995). The information requirements for this rule are the same as those set forth for most Federal grant programs and are consistent with OMB Circular A–102.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has evaluated this regulation in accordance with its procedures for ensuring full consideration of the environmental impacts of DOT actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1C. This final rule meets the criteria that establish it as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

In 49 CFR, a new part 110 is added to read as follows:

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

Sec.

110.1 Purpose.
110.5 Scope.
110.7 Control Number under the Paperwork Reduction Act.
110.10 Eligibility.
110.20 Definitions.
110.30 Grant application.
110.40 Activities eligible for funding.
110.50 Disbursement of Federal funds.
110.60 Cost sharing for planning and training.
110.70 Financial administration.
110.80 Procurement.
110.90 Grant monitoring, reports, and records retention.
110.100 Enforcement.
110.110 After-grant requirements.
110.120 Deviation from this part.
110.130 Disputes.

1. The authority citation for Part 110 is added to read as follows:

Authority: 49 App. U.S.C. 1815; 49 CFR Part 1.

§ 110.1 Purpose.

This part sets forth procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes, and local communities to deal with hazardous materials emergencies, particularly those involving transportation. These grants will enhance the implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001).

§ 110.5 Scope.

(a) This part applies to States and Indian tribes and contains the program requirements for public sector training and planning grants to support hazardous materials emergency planning and training efforts.

(b) The requirements contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", apply to grants issued under this Part.

(c) Copies of standard forms and OMB circulars referenced in this part are available from the HMTUSA Grants Manager, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC. 20590–0001.

§ 110.7 Control Number under the Paperwork Reduction Act.

The Office of Management and Budget control number assigned to collection of information in §§ 110.30, 110.70, 110.80, and 110.90 is *2137–0586*.

§ 110.10 Eligibility.

This Part applies to States and Indian tribes. States may apply for planning and training grants. Federally-recognized Indian tribes may apply for training grants.

§ 110.20 Definitions.

Unless defined in this Part, all terms defined in Section 103 of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1802) are used in their statutory meaning and all terms defined in 49 CFR Part 18 and OMB Circular A–102, with respect to administrative requirements for grants, are used as defined therein. Other terms used in this Part are defined as follows:

Allowable costs means those costs that are: eligible, reasonable, necessary, and allocable to the project permitted by the appropriate Federal cost principles, and approved in the grant.

Budget period means the period of time specified in the grant agreement during which the project manager may expend or obligate project funds.

Cost review means the review and evaluation of costs to determine reasonableness, allocability, and allowability.

Indian country means Indian country as defined in 18 U.S.C. 1151. That section defines Indian country as all land within the limits of any reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means a tribe "Federally-recognized" by the Secretary of the Interior under 25 CFR 272.2.

Local Emergency Planning Committee (LEPC) means a committee appointed by the State Emergency Response Commission under Section 301(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001(c)) that includes at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, firefighting, civil defense, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the emergency planning requirements.

National curriculum means the curriculum required to be developed under Section 117A of HMTA and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in Section 117A(g)(4).

Political subdivision means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Project means the activities and tasks identified in the grant agreement.

Project manager means the State or Indian tribal official designated in a grant as the recipient agency's principal program contact with the Federal Government.

Project officer means the Federal official designated in a grant as the program contact with the project manager. The project officer is responsible for monitoring the project.

Project period means the length of time specified in a grant for completion of all work associated with that project.

State Emergency Response Commission (SERC) means the State Emergency Response Commission appointed by the Governor of each State and Territory under the Emergency Planning and Community Right-to-Know Act of 1986.

Statement of Work means that portion of a grant that describes the purpose and scope of activities and tasks to be carried out as part of the proposed project.

§ 110.30 Grant application.

(a) *General.* An applicant for a planning or training grant shall use only the standard application forms approved by the Office of Management and Budget (OMB) (SF–424 and SF–424A) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to submit an original and two copies of the application package to: HMTUSA Grants Manager, Research and Special Programs Adminstration, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590–0001. Applications received on or before January 1st and July 1st of each year will be considered in that cycle of the semi-annual review and award process. An initial round of the review and award process will consider applications received on or before November 15, 1992. Requests and continuation applications must include an original and two copies of the affected pages; previously submitted pages with information that is still current do not have to be resubmitted. The application must include the following:

(1) Application for Federal Assistance for non-construction programs (SF–424) and Budget sheets (SF–424A). A single application may be used for both planning and training if the budgets for each are entered separately on all budget sheets.

(2) For States, a letter from the Governor designating the State agency that is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(3) For Indian tribes, a letter from the tribal government, governing body, or tribal council to the effect that the applicant is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(4) A written statement explaining whether the State or tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials.

(5) A statement designating a project manager and providing the name, position, address and phone number of that individual who will be responsible for coordinating the funded activities with other agencies/organizations.

(6) A project narrative statement of the goals and objectives of the proposed project, project design, and long range plans. The proposed grant project and budget periods may be one or more years.

(7) A statement of work in support of the proposed project that describes and sets priorities for the activities and tasks to be conducted, the costs associated with each activity, the number and types

of deliverables and products to be completed, and a schedule for implementation.

(8) A description of the major items of costs needed to implement the statement of work and a copy of any cost or price analysis if conducted.

(9) *Drug-Free Workplace Certification.* The applicant must certify as specified in appendix C of 49 CFR part 29 that it will comply with the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 51 U.S.C. 701 et seq.).

(10) *Anti-Lobbying Certification.* The applicant must certify as specified in appendix A of 49 CFR part 20 that no Federal funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress (section 319 of Pub. L. 101–121, 31 U.S.C. 1352).

(11) *Debarment and Suspension Certification.* The applicant must certify as specified in subpart G of 49 CFR part 29 that it will not make an award or permit any award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

(b) *Planning.* In addition to the requirements specified in paragraph (a) of this section, eligible State applicants must include the following in their application package:

(1) A written certification that the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act of 1986, including a brief explanation of how compliance has been achieved.

(2) A written statement specifying the aggregate expenditure of funds of the State, exclusive of Federal funds, for each of its last two fiscal years for developing, improving, and implementing emergency plans under the Emergency Planning and Community Right-to-Know Act of 1986, including an explanation specifying the sources of these funds. A written certification that the State's aggregate expenditures, as defined by the State, of funds for this purpose, exclusive of Federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing.

(3) A written statement agreeing to make at least 75 percent of the Federal funds awarded available to LEPCs and an explanation of how the applicant intends to make such funds available to them for developing, improving, or implementing emergency plans.

(4) Designation of a project manager to serve as contact for coordinating planning funds under this program.

(5) A project narrative statement of the goals and objectives of each proposed project, including the following:

(i) A background statement describing the applicant's long-term goals and objectives with respect to:

(A) The current abilities and authorities of the applicant's program for preparedness planning;

(B) The need to sustain or increase program capability;

(C) Current degree of participation in or intention to assess the need for a regional hazardous materials emergency response team; and

(D) The impact that the grant will have on the program.

(ii) A discussion of whether the applicant's program currently knows, or intends to assess, transportation flow patterns of hazardous materials within the State and between that State and another State.

(iii) A schedule for implementing the proposed grant activities.

(iv) A statement describing the ways in which planning will be monitored by the project manager.

(v) A statement indicating that all members of the State Emergency Response Commission were provided the opportunity to review the grant application.

(c) *Training.* In addition to the requirements specified in paragraph (a) of this section, eligible State and Indian Tribe applicants must include the following in their application package:

(1) For a State applicant, a written certification explaining how the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act.

(2) A written statement specifying the aggregate expenditure of funds of the State or Indian tribe, exclusive of Federal funds, for each of its last two fiscal years for training public sector employees to respond to accidents and incidents involving hazardous materials, including an explanation specifying the sources of these funds. A written certification that the applicant's aggregate expenditure, as defined by the State or tribe, of funds for this purpose, exclusive of Federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing purposes.

(3) For a State applicant, a written statement agreeing to make at least 75 percent of the Federal funds awarded available for the purpose of training public sector employees employed or used by political subdivisions. A State applicant may elect to pass all or some portion of the grant on to political subdivisions for this purpose. The applicant must include a specific explanation of how it intends to meet this requirement.

(4) Designation of a primary point of contact for coordinating training funded under this program. Identification of a single repository for copies of course materials delivered under the grant as specified in § 110.90 of this part.

(5) A project narrative statement of the long-range goals and objectives of each proposed project, including the following:

(i) A background statement describing:

(A) The current hazardous materials training program(s);

(B) Training audience, including numbers and levels of training and accreditation program for each level or criterion required to advance to the next level;

(C) Estimated total number of persons to be trained under the proposed project;

(D) The ways in which training grants will support the integrated delivery of training to meet the needs of individualized geographic and resource needs and time considerations of local responders. When appropriate, a statement describing how the proposed project will accommodate the different training needs for rural versus urban environments; and

(E) The impact that the grant and the National Curriculum will have on the program.

(ii) A statement describing how the National Curriculum will be used or modified to train public sector employees at the local level to respond to accidents and incidents involving hazardous materials.

(iii) A statement describing the ways in which effectiveness of training will be monitored by the project manager, including, but not limited to, examinations, critiques, and instructor evaluations.

(iv) A schedule for implementing the proposed training grant activities.

(v) A statement indicating that all members of the State or Tribal Emergency Response Commission were provided the opportunity to review the grant application.

§ 110.40 Activities eligible for funding.

(a) *Planning.* Eligible State applicants may receive funding for the following activities:

(1) Development, improvement, and implementation of emergency plans

required under the Emergency Planning and Community Right-to-Know Act of 1986, as well as exercises which test the emergency plan. Enhancement of emergency plans to include hazard analysis as well as response procedures for emergencies involving transportation of hazardous materials, including radioactive materials.

(2) An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian country, and development and maintenance of a system to keep such information current.

(3) An assessment of the need for regional hazardous materials emergency response teams.

(4) An assessment of local response capabilities.

(5) Conduct of emergency response drills and exercises associated with emergency preparedness plans.

(6) Provision of technical staff to support the planning effort.

(7) Additional activities the Associate Administrator for Hazardous Materials Safety deems appropriate to implement the scope of work for the proposed project plan and approved in the grant.

(b) *Training.* Eligible State and Indian tribe applicants may receive funding for the following activities:

(1) An assessment to determine the number of public sector employees employed or used by a political subdivision who need the proposed training and to select courses consistent with the National Curriculum.

(2) Delivery of comprehensive preparedness and response training to public sector employees. Design and delivery of preparedness and response training to meet specialized needs. Financial assistance for trainees and for the trainers, if appropriate, such as tuition, travel expenses to and from a training facility, and room and board while at the training facility.

(3) Emergency response drills and exercises associated with training, a course of study, and tests and evaluation of emergency preparedness plans.

(4) Expenses associated with training by a person (including a department, agency, or instrumentality of a State or political subdivision thereof or an Indian tribe) and activities necessary to monitor such training including, but not limited to examinations, critiques and instructor evaluations.

(5) Provision of staff to manage the training effort designed to result in increased benefits, proficiency, and rapid deployment of local and regional responders.

(6) Additional activities the Associate Administrator for Hazardous Materials Safety deems appropriate to implement the scope of work for the proposed project and approved in the grant.

§ 110.50 Disbursement of Federal funds.

(a) Preaward expenditures may not be reimbursed.

(b) Reimbursement may not be made for a project plan unless approved in the grant award.

(c) If a recipient agency seeks additional funds, the amendment request will be evaluated on the basis of needs, performance and availability of funds. An existing grant is not a commitment of future Federal funding.

§ 110.60 Cost sharing for planning and training.

(a) The recipient agency must provide 20 percent of the direct and indirect costs of all activities covered under the grant award program with non-Federal funds. Recipients may either use cash (hard-match), in-kind (soft-match) contributions, or a combination of in-kind plus hard match to meet this requirement. In-kind (soft-match) contributions are in addition to the maintenance of effort required of recipients of grant awards. The types of contributions allowed are as follows:

(1) Any funds from a State, local, or other non-Federal source used for an eligible activity as defined in § 110.40 in this part.

(2) The dollar equivalent value of an eligible activity as defined in § 110.40 of this part provided by a State, local, or other non-Federal source.

(3) The value of participants' salary while attending a planning or training activity contained in the approved grant application provided by a State, local, or other non-Federal source.

(4) Additional types of in-kind contributions the Associate Administrator for Hazardous Materials Safety deems appropriate.

(b) Funds used for matching purposes under any other Federal grant or cooperative agreement may not be used for matching purposes. The funds expended by a recipient agency to qualify for the grant may not be used for cost-sharing purposes.

(c) Acceptable contributions for matching and cost sharing purposes must conform to 49 CFR Part 18.

§ 110.70 Financial administration.

(a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

(1) Permit the preparation of reports required by 49 CFR Part 18 and this Part, including the tracing of funds provided for planning to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available to LEPCs for developing, improving, and implementing emergency plans; and the tracing of funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(2) Permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of Indian tribes and any subgrantees must meet the standards of 49 CFR 18.20, including the ability to trace funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(c) Advances shall be made to States and Indian tribes consistent with 49 CFR part 18 and 31 CFR part 205. The Associate Administrator for Hazardous Materials Safety shall base these advances on demonstrated need, which will be determined on a case-by-case basis, considering such factors as State/Tribal budget constraints and reductions in amounts budgeted for hazardous materials activities. To obtain an advance, a State or Indian tribe must comply with the following requirements:

(1) A letter from the Governor or Tribal leader or their designee is required specifying the extenuating circumstances requiring the funding advance for the grant;

(2) The maximum advance request may not be more than $25,000 for each State or Indian tribe;

(3) Recipients of advance funding must obligate those funds within 3-months of receipt;

(4) Advances including interest will be deducted from the initial reimbursement to the State or Indian tribe; and

(5) The State or Indian tribe will have its allocation of current grant funds reduced and will not be permitted to apply for future grant funds until the advance is covered by a request for reimbursement. For example, if $25,000 is advanced for personnel costs, this advance would be deducted from the

initial reimbursement in the year the advance was made.

(d) To be allowable, costs must be eligible, reasonable, necessary, and allocable to the approved project in accordance with OMB Circular A–87 and included in the grant award. Costs incurred prior to the award of any grant are not allowable. Recipient agencies are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501), 49 CFR part 90, and OMB Circular A–128. Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. The Associate Administrator for Hazardous Materials Safety may audit a recipient agency at any time.

§ 110.80 Procurement.

Project managers shall use procurement procedures and practices which reflect applicable State laws and regulations and Federal requirements as specified in 49 CFR 18.36.

§ 110.90 Grant monitoring, reports, and records retention.

(a) *Grant monitoring.* Project managers are responsible for managing the day-to-day operations of grant, subgrant and contract-supported activities. Project managers must monitor performance of supported activities to assure compliance with applicable Federal requirements and achievement of performance goals. Monitoring must cover each program, function, activity, or task covered by the grant. Monitoring and reporting requirements for planning and training are contained in this Part; general grant reporting requirements are specified in 49 CFR 18.40.

(b) *Reports.* (1) The project manager shall submit a performance report at the completion of an activity for which reimbursement is being requested or with a request to amend the grant. The final performance report is due 90 days after the expiration or termination of the grant.

(2) Project managers shall submit an original and two copies of all performance reports. Performance reports for planning and training must include comparison of actual accomplishments to the stated goals and objectives established for the performance period, and the reasons for not achieving those goals and objectives, if applicable.

(3) Project managers shall report developments or events that occur between the required performance reporting dates which have significant impact upon the planning and training activity such as:

(i) Problems, delays, or adverse conditions which will impair the ability to meet the objective of the grant; and

(ii) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(4) Financial reporting, except as provided in § 110.70 and 49 CFR 18.41, shall be supplied quarterly using Standard Form 270, Request for Advance or Reimbursement, to report the status of funds. The project manager shall report separately on planning and training.

(c) *Records retention.* In accordance with 49 CFR 18.42, all financial and programmatic records, supporting documents, statistical records, training materials, and other documents generated under a grant shall be maintained by the project manager for three years from the date the project manager submits the final financial status report (SF 269) or Request for Advance or Reimbursement (SF 270). The project manager shall designate a repository and single-point of contact for planning and for training, or both, for these purposes. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

§ 110.100 Enforcement.

If a recipient agency fails to comply with any term of an award (whether stated in a Federal statute or regulation, an assurance, a State plan or application, a notice of award, or elsewhere) a noncompliance action may be taken as specified in 40 CFR 18.43. The recipient agency may appeal any such actions as specified in 49 CFR part 18. Costs incurred by the recipient agency during a suspension or after termination of an award are not allowable unless the Associate Administrator for Hazardous Materials Safety authorizes it in writing. Grant awards may be terminated in whole or in part with the consent of the recipient at any agreed upon effective date, or by the recipient upon written notification.

§ 110.110 After-grant requirements.

The Associate Administrator for Hazardous Materials Safety will close out the award upon determination that all applicable administrative actions and all required work of the grant are complete in accordance with Subpart D of 49 CFR part 18. The project manager must submit all financial, performance, and other reports required as a condition of the grant, within 90 days after the expiration or termination of the grant. This time frame may be extended by the Associate Administrator for Hazardous Materials Safety for cause.

§ 110.120 Deviation from this part.

Recipient agencies may request a deviation from the non-statutory provisions of this part. The Associate Administrator for Hazardous Materials Safety will respond to such requests in writing. If appropriate, the decision will be included in the grant agreement. Request for deviations from Part 110 must be submitted to: HMTUSA Grants Manager, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590–0001.

§ 110.130 Disputes.

Disputes should be resolved at the lowest level possible, beginning with the project manager and the project officer. If an agreement cannot be reached, the Administrator, RSPA, will serve as the dispute resolution official, whose decision will be final.

Issued in Washington, DC, on August 24, 1992, under authority delegated in 49 CFR part 106, appendix A.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92–22220 Filed 9–16–92; 8:45 am]

BILLING CODE 4910–60–M