

area by providing specific BMPs in place of the commitment to adopt BMPs in ARS 49–457. The general permit rule is also consistent with the development of an overall plan capable of meeting the CAA's PM–10 attainment requirements.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 10, 2001.

**Mike Schulz,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(98) to read as follows:

#### § 52.120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(98) Plan revisions were submitted on July 11, 2000 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Administrative Code R18–2–610 and R18–2–611 effective May 12, 2000.

\* \* \* \* \*

(B) [Reserved]

[FR Doc. 01–25549 Filed 10–10–01; 8:45 am]

BILLING CODE 6560–50X–P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### 42 CFR Part 51d

RIN 0930–AA09

#### Substance Abuse and Mental Health Services Administration; Mental Health and Substance Abuse Emergency Response Criteria

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

**ACTION:** Interim final rule.

**SUMMARY:** Section 3102 of the Children's Health Act of 2000, Pub. L. 106–310, amends section 501 of the Public Health Service (PHS) Act (42 U.S.C. 290aa) to add a new subsection (m) entitled “Emergency Response.” This newly enacted subsection 501(m) authorizes the Secretary to use up to, but no more than, 2.5% of all amounts appropriated under Title V of the PHS Act, other than those appropriated under Part C, in each

fiscal year to make “noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities.”

Because Congress believed the Secretary needed the ability to respond to emergencies, it exempted any grants, contracts, or cooperative agreements authorized under this section from the peer review process otherwise required by section 504 of the PHS Act. See section 501(m)(1) of the PHS Act. Instead, the Secretary is to use an objective review process by establishing objective criteria to review applications for funds under this authority.

Pursuant to Public Law 106–310, the Secretary is required to establish, and publish in the **Federal Register**, criteria for determining when a mental health or substance abuse emergency exists. In this interim final rule, the Secretary sets out these criteria, as well as the intended approach for implementing this new mental health and substance abuse emergency response authority. The Secretary invites public comments on both the criteria and the approach described in this interim final rule.

**DATES:** This regulation is effective on October 11, 2001. Written comments must be received on or before December 10, 2001.

**ADDRESSES:** Written comments should be sent to Judith B. Braslow, Deputy Associate Administrator for Policy and Program Coordination, Substance Abuse and Mental Health Services Administration (SAMHSA), Room 12C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Submit comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th St. NW, Washington DC 20503, Attention: Desk Officer for SAMHSA.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Braslow, Deputy Associate Administrator for Policy and Program Coordination, Substance Abuse and Mental Health Services Administration (SAMHSA), (301)443–4111.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of Health and Human Services (the Department) has been called upon in recent years to play an increasingly active leadership role in responding to the behavioral health needs that arise as the result of both natural and human-caused emergencies and disasters. To date, the grant assistance rendered by the Substance

Abuse and Mental Health Services Administration (SAMHSA) has been limited primarily to crisis counseling services in the aftermath of Presidentially declared disasters. Through an interagency agreement with the Federal Emergency Management Agency (FEMA), SAMHSA’s Center for Mental Health Services (CMHS) provides technical assistance, training, consultation, and grant monitoring for the Crisis Counseling Assistance and Training Program (CCP), which is authorized through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707, Section 416, and implementing regulations (44 CFR 206.171). This jointly-administered program allows States to apply for Federal support for services to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster. The services provided through the FEMA/CMHS Crisis Counseling Assistance and Training Program remain a cornerstone of the Federally-supported mental health response to Presidentially-declared disasters. However, Congress recognized the need to expand emergency services to include both mental health and substance abuse needs, whether or not a Presidential disaster is declared under the above authority.

To help address these needs the Secretary, through SAMHSA, was given the mandate to develop a new emergency grant program under its recent reauthorization legislation, which was signed into law on October 17, 2000, Pub. L. 106–310. Section 3102 of this law adds a new subsection, entitled “Emergency Response” to section 501 of the Public Health Service (PHS) Act. This newly enacted subsection enables the Secretary to use a small portion of funds appropriated each fiscal year to make “noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities.” This Interim Final Rule establishes procedures by which the Department may provide these funds.

This new authority permits the Department to respond in emergency situations when behavioral health needs overwhelm State, Tribal or local resources, and other resources are unavailable. Because of the urgent necessity of assuring a Federal response capacity in emergency situations, the Secretary is issuing an interim final rule, which will allow the Secretary, through SAMHSA, to respond

immediately under emergency circumstances.

In implementing this new authority, the Department is placing an emphasis on coordination among Federal funding entities. In order to avoid duplication of services, the Department will coordinate closely with other Federal agencies that may provide funding support for behavioral health services in emergency situations. These other funding sources include the Readiness, Response and Recovery Directorate within the Federal Emergency Management Agency (FEMA), the Safe and Drug Free Schools Program within the U.S. Department of Education, the Office for Victims of Crime (OVC) within the U.S. Department of Justice, the National Transportation Safety Board (NTSB) within the U.S. Department of Transportation, the Emergency Response Program within the Environmental Protection Agency (EPA), the Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior, the Animal and Plant Health Inspection Service within the U.S. Department of Agriculture, and the Indian Health Service (IHS) within the U.S. Department of Health and Human Services. The funds identified for use under this Interim Final Rule are considered “funds of last resort” and may not be used to supplant or replace other existing funds. Therefore, we view this new authority as an important adjunct to the existing authority to make “Mental Health Crisis Counseling Grant” awards to States because we are able to fund different types of services beyond crisis counseling.

**Summary of Regulation**

*Emergency Criteria*

This Interim Final Rule identifies noncompetitive, objective conditions and criteria the government will use to expedite the allocation of funds. In establishing the criteria used to determine whether an emergency exists, we have described the following minimum elements: (1) Existing State, Tribal and local systems for mental health and/or substance abuse services are overwhelmed or unable to meet the existing mental health or substance abuse needs of the local community at issue; and (2) this inability to meet the mental health and/or substance abuse service needs of a local community is the direct consequence of a clear precipitating event. This precipitating event must have a sudden, rapid onset and a definite conclusion, such as a natural disaster (such as a hurricane, tornado, storm, flood, earthquake, fire, drought, or other natural catastrophe), a

technological disaster (such as a chemical spill, a major industrial accident, or a transportation accident), or a criminal act (such as a domestic act of terrorism, a hostage situation, or an incident of mass violence including school shootings and riots) and result in significant death, injury, exposure to life-threatening circumstances, hardship, suffering, loss of property, or loss of community infrastructure (e.g., loss of treatment facilities, staff, public transportation and/or utilities, or isolation from services); and (3) no other local, State, Tribal or Federal funding is available to adequately address the specific level of need resulting from the precipitating event and resulting emergency mental health and/or substance abuse service needs of the impacted community.

#### *Eligible Applicants*

Eligible applicants are limited to public entities, which are defined in the rule as any State, any political subdivision of a State, any Federally recognized Indian tribal government or tribal organization. Eligibility is restricted to public entities as required by the authorizing legislation.

#### *Types of Awards*

Eligible applicants may apply to the Secretary for either of two types of substance abuse and mental health emergency response grants: Immediate awards and Intermediate awards. The former are designed to be funded up to \$50,000, or such greater amount as determined by the Secretary on a case-by-case basis, and are to be used over the initial 90-day period commencing as soon as possible after the precipitating event; the latter awards require more documentation, including a needs assessment, other data and related budgetary detail. The Intermediate awards have no predefined budget limit. Typically, Intermediate awards would be used to meet systemic mental health and/or substance abuse needs during the recovery period following the Immediate award period. Such awards may be used for up to one year, with a possible second year supplement based on submission of additional required information and data.

#### *Application Procedure*

Applications for Immediate awards must be submitted on a form that has been approved by the Office of Management and Budget (OMB), and include the following information: a certification by the State's chief executive officer that a mental health or substance abuse emergency exists, as well as a written statement setting out

the basis for the certification; a brief program plan describing needs; an estimate of the number of people to be served and the geographical area to be served; a description of the types of services to be provided; a budget justifying the amount of the request; other required certifications included in the application; and such other pertinent information the Secretary may require.

The Department is requiring that the certification of the mental health or substance abuse emergency is made by the State's chief executive officer, rather than from a local government, based on the governor's experience and expertise in disaster declarations gleaned from the FEMA grants. In addition, the Department believes that it is important to have high-level certification so that any available State funds can be allocated to the emergency in accordance with the conditions of this grant. However, it is important to note that although the certification must be obtained from the chief executive officer, local governments are eligible to seek the grant and must sign the application as the responsible fiscal party.

The Department encourages applicants to submit the application to the single state agency for Alcohol and Drug abuse and/or the State mental health program for comments.

Applications for Intermediate awards must be submitted on a form that has been approved by the OMB, and include the following information: if the applicant has not applied previously for an Immediate award, a certification by the State's chief executive officer that a mental health or substance abuse emergency exists, as well as a written statement setting out the basis for the certification, an application submission date within three months of the date of the event that precipitated the mental health or substance abuse emergency (unless waived by the Secretary), a detailed and comprehensive assessment of need, demographics specific to the number of people to be served, a description of the services that were provided up to the date of the submission of the Intermediate award application, the geographical area to be served, a detailed implementation program plan and related time line, including a description of outreach to special population groups affected by the crisis, a budget justifying the amount of the request for personnel, equipment, supplies, travel, training, data collection and any technical assistance required, and any information that has changed since an Immediate application was submitted, if one was submitted.

#### *Objective Criteria for Application Evaluation*

Applications for both Immediate and Intermediate grants will be evaluated using the following objective criteria: (1) Documentation of need, (2) plan of services, and (3) organizational capability. In assessing documentation of need, the applicant needs to demonstrate that the mental health and/or substance abuse needs are a direct result of the precipitating event; identify any high risk groups or populations with special concerns that may impact the delivery of services (e.g., children, adolescents, older adults, ethnic and cultural groups, lower income populations); and clearly document that no other local, State, Tribal or Federal funding sources are available to address the need. An adequate plan of services must clearly identify the types of services to be provided (e.g., outreach, crisis counseling, public education on stress management and crisis mental health, public education on substance abuse prevention, information and referral services, short term substance abuse or mental health prevention and/or treatment services); strategies for targeting those identified as needing services, including high risk groups or populations with special concerns identified in the needs assessment; appropriate training to be provided to staff to assure that services are appropriate to the crisis situation and the plans for community recovery; quality control methods in place to assure appropriate services to the target population; staff support mechanisms that are available; and plans for coordination of services with key local, State, Tribal and Federal partners involved in addressing the precipitating event (e.g., emergency management agencies, law enforcement, education agencies, public health agencies, agricultural extension agencies, environmental agencies, and other agencies active in crisis response). In assessing organizational capability, the applicant needs to demonstrate a history of service delivery to the target population within the defined service area for the program. The budget submitted must provide sufficient justification and demonstrate that it is consistent with the documentation of need and plan of services. Finally, SAMHSA may consult with other Federal agencies responsible for responding to crisis incidents, to ensure that these are "funds of last resort."

The Department is soliciting formal comments on this Interim Final Rule in order to assure that the proposed criteria, procedures and requirements

are responsive and address the needs, issues and concerns of potential grantees, and the public at large.

*Justification for Interim Final Rule*

The Department has decided to issue this document as an Interim Final Rule with an immediate effective date as well as a comment period of 60 days after publication in the **Federal Register**. It is the Department's view that good cause exists that notice and comment are "impracticable, \* \* \* or contrary to the public interest." 5 U.S.C. 553(b)(B). We make this finding for the following reasons:

The purpose of the statute is to provide funding for noncompetitive grants to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities. In light of the current emergency situations with respect to the terrorist attacks, it has been determined that a delay for the purpose of comment and the effective date would be contrary to the public interest. Although we are making the rule effective immediately without first obtaining public comment, we are providing for a 60-day comment period after publication. Thus, should we receive any significant comments that would cause us to revise this rule in any way, we will be able to do so.

*Executive Order 12866: Economic Impact*

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). We have determined that the rule is not a "significant regulatory action" under Section 3(f) of the Executive Order. This rule does not have an annual effect on the economy of \$100 million or more, create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues. Therefore, this interim final rule does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order and thus has been exempted from review by the Office of Management and Budget under that Order.

*Regulatory Flexibility*

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. We have determined that this is not a "major" rule under the Regulatory Flexibility Act of 1980, and that it will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

*Unfunded Mandates*

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule contains no Federal mandates for State, tribal, or local governments or for the private sector.

*Executive Order 13132: Federalism Implications*

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. We reviewed the rule as required under the Order and determined that it does not have any federalism implications. This rule will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

*Paperwork Reduction Act of 1995*

This Interim Final Rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title: Emergency Response Grants Regulations—42 CFR part 51*

*Description:* This rule implements Section 501(m) of the Public Health Service Act (42 U.S.C. 290aa), which authorizes the Secretary to make noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities. The rule establishes criteria for determining that a substance abuse or mental health emergency exists, the minimum content for an application, and reporting requirements for recipients of such funding.

*Description of Respondents:* State, local or tribal governments

*Response Burden Estimates:* This program will be an approved user of the PHS-5161 application form, approved by OMB under control number 0920-0428. The quarterly financial status reports in 42 CFR 51d.10(a)(2) and (b)(2) are as permitted by 45 CFR 92.41(b); the final program report, financial status report and final voucher in 42 CFR 51d.10(a)(3), 51d.10(b)(3), and 51d.10(b)(4) are in accordance with 45 CFR 92.50(b). Information collection requirements of 45 CFR part 92 are approved by OMB under control number 0990-0169. The following table presents annual burden estimates for the information collection requirements of this regulation.

42 CFR citation and type of application	Number of respondents	Responses/respondent	Burden per response(Hrs.)	Total burden
51d.4(a) and 51d.6(a)(2) Immediate awards—application .....	3	1	3	1(9)
51d.4(b) and 51d.6(a)(2)—Intermediate Awards—application .....	3	1	10	1(30)
51d.10(a)(1)—Immediate awards—mid-program report as part of Intermediate award application .....	3	1	2	6
51d.10(c)—Final report content .....	3	1	3	9
<b>Total .....</b>	<b>6</b>	<b>.....</b>	<b>.....</b>	<b>15</b>

<sup>1</sup> This burden is carried under OMB control number 0920-0428.

As required by section 3507(d) of the PRA the Secretary has submitted a copy of the information collection requirements in the interim final rule to OMB for its review. The Secretary has requested emergency review and approval of this information collection and OMB has approved it under control number 0930-0229 through 03/31/2002.

Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate whether the collection of information is necessary for the proper performance of DHHS's functions, including whether the information will have practical utility; (2) evaluate the accuracy of DHHS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB (address above). Comments to OMB are best assured of having their full effect if OMB receives them by November 13, 2001. This does not affect the deadline for the public to comment to DHHS on the proposed regulation.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's rule does not significantly or uniquely affect the communities of Indian tribes and tribal organizations. The rule specifically permits Indian tribes and tribal organizations to apply for emergency mental health and substance abuse funding in ways that are similar to the way States and local governments apply, but more directly tailored to the functioning of the tribes. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with our policy to promote communications between the Department and tribes and tribal organizations, we specifically solicit additional comment on this proposed rule from tribal officials.

**List of Subjects in 42 CFR Part 51d**

Administrative practice and procedure, Grant programs-health, Health facilities, Emergency medical services, Disaster assistance, Mental health programs, Drug abuse, Privacy, Reporting and recordkeeping requirements.

Dated: September 20, 2001.

**Tommy G. Thompson,**  
*Secretary.*

For the reasons stated above, the Department of Health and Human Services adds to Subchapter D of Title 42 CFR, a new part 51d to read as follows:

**PART 51d—MENTAL HEALTH AND SUBSTANCE ABUSE EMERGENCY RESPONSE PROCEDURES**

Sec.

- 51d.1 To what does this subpart apply?
- 51d.2 Definitions.
- 51d.3 Who is eligible for an award under this subpart?
- 51d.4 What information is required in the application?
- 51d.5 How is an emergency determined to exist?
- 51d.6 How will funding applications be evaluated and awarded?

51d.7 What are the limitations on how award funds may be used?

51d.8 Which other HHS regulations apply to these awards?

51d.9 What other conditions apply to these awards?

51d.10 What are the reporting requirements?

**Authority:** 42 U.S.C. 290aa(m).

**§ 51d.1 To what does this subpart apply?**

The regulations in this subpart apply to grants that enable public entities to respond to needs in local communities created by mental health or substance abuse emergencies, as authorized under section 501(m) of the Public Health Service Act (42 U.S.C. 290aa(m)).

**§ 51d.2 Definitions.**

As used in this part:

*Federally recognized Indian Tribal government* means the governing body of any Indian tribe, band, nation, or other organized group or community, including any Native village as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

*Immediate award* means a short term award of up to \$50,000, or such greater amount as determined by the Secretary on a case-by-case basis, to address the immediate needs resulting from a mental health or substance abuse emergency. Such funding may be provided for a period of up to 90 days.

*Intermediate award* means an award intended to meet the more ongoing needs resulting from a mental health or substance abuse emergency than is possible under an Immediate award. Intermediate awards may fund up to one year of services, although in some exceptional circumstances, and to the extent that funding is available, such funding may be continued for an additional period of up to one year.

*Presidential disaster declaration* means a declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 *et seq.*

*Public entity* means any State, any political subdivision of a State, any

Federally recognized Indian tribal government or tribal organization.

*Secretary* means the Secretary of Health and Human Services (HHS) or any other officer or employee of that Department to whom the authority involved has been delegated.

*State* means one of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

*Tribal organization* means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

#### **§ 51d.3 Who is eligible for an award under this subpart?**

An applicant must be a public entity as defined by this subpart. Applicants are eligible for either or both Immediate and Intermediate awards.

#### **§ 51d.4 What information is required in the application?**

(a) *Application for Immediate awards:* The application is to contain the following information:

(1) A certification by the State's chief executive officer, or, for the purposes of a Federally recognized Indian tribal government, the principal elected official, or such officer's or official's designee, that a mental health or substance abuse emergency exists, as well as a written statement setting out the basis for the certification;

(2) A brief program plan describing needs;

(3) An estimate of the number of people to be served and the geographical area to be served;

(4) A description of the types of services to be provided;

(5) A budget justifying the amount of the request;

(6) Required certifications; and

(7) Such other pertinent information as the Secretary may require.

(b) *Application for Intermediate awards:* The application is to be submitted on an OMB-approved application form and contain the following:

(1) If the applicant has not applied previously for an Immediate award, a certification by the State's chief executive officer, or, for the purposes of a Federally recognized Indian tribal government, the principal elected

official, or such officer's or official's designee, that a mental health or substance abuse emergency exists, as well as a written statement setting out the basis for the certification;

(2) An application submission date within three months of the date of the event that precipitated the mental health or substance abuse emergency, as certified in accordance with 51d.4(a)(1) or (b)(1), except that upon the request of a State, the Secretary may provide a waiver of this application submission deadline if the Secretary determines there is good cause to justify the waiver;

(3) A detailed and comprehensive assessment of need;

(4) Demographics specific to the estimated number of people to be served;

(5) A description of the services that were provided up to the date of the submission of the Intermediate award application;

(6) The geographical area to be served;

(7) A detailed implementation program plan and related time line, including a description of outreach to special population groups affected by the crisis;

(8) A budget justifying the amount of the request for personnel, equipment, supplies, travel, training, data collection and any technical assistance required; the budget shall include an identification of the resources the applicant is able to commit to the project, if any, including any in-kind contributions;

(9) Any information that has changed since an Immediate application was submitted, if one was submitted; and

(10) such other pertinent information as the Secretary may require.

(c) *Signature on Award Applications.* The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, all applicable regulations, and any additional conditions of the grant.

#### **§ 51d.5 How is an emergency determined to exist?**

(a) In making a decision as to whether a mental health or substance abuse emergency exists for purposes of section 501(m) of the PHS Act, the Secretary, using discretion, will consider all relevant factors, but at a minimum the following must exist:

(1) Existing State, Tribal and local systems for mental health and/or substance abuse services are overwhelmed or unable to meet the existing mental health or substance abuse needs of the local community at issue; and

(2) This inability to meet the mental health and/or substance abuse service needs of a local community is the direct consequence of a clear precipitating event. This precipitating event must:

(i) Have a sudden, rapid onset and a definite conclusion, such as:

(A) A natural disaster (including, but not limited to, a hurricane, tornado, storm, flood, earthquake, fire, drought, or other natural catastrophe); or

(B) A technological disaster (including, but not limited to, a chemical spill, a major industrial accident, or a transportation accident); or

(C) A criminal act with significant casualties (including, but not limited to, a domestic act of terrorism, a hostage situation, or an incident of mass violence including school shootings and riots); and

(ii) Result in significant:

(A) Death,

(B) Injury,

(C) Exposure to life-threatening circumstances,

(D) Hardship,

(E) Suffering,

(F) Loss of property, or

(G) Loss of community infrastructure (e.g., loss of treatment facilities, staff, public transportation and/or utilities, or isolation from services); and

(3) No other local, State, Tribal or Federal funding is available to adequately address the specific level of need resulting from the precipitating event and resulting emergency mental health and/or substance abuse service needs of the impacted community.

(b) In making a determination that a mental health or substance abuse emergency exists, the Secretary will consider the certification and written statements provided in accordance with § 51d.4(a)(1) or (b)(1), and other information independently available to the Secretary.

(c) Once the Secretary determines that a mental health or substance abuse emergency exists, the Secretary may exercise discretion to make awards to enable public entities to respond to the emergency, within the limits of funds available.

#### **§ 51d.6 How will applications be evaluated and awarded?**

(a) In assessing applications for funding, the Secretary will utilize the following criteria.

(1) *Documentation of Need.* Applicant has demonstrated mental health and/or substance abuse needs directly resulting from the precipitating event. The precipitating event is clearly identified along with information regarding its impact. Applicant has identified any

high risk groups or populations with special concerns that may impact the delivery of services (e.g., children, adolescents, older adults, ethnic and cultural groups, lower income populations). This documentation of need shall include the extent of physical, psychological and social problems observed, and a description of how the estimate of the number of people to be served was made. Applicant has clearly documented that no other local, State, Tribal or Federal funding sources are available to address the need.

(2) *Plan of Services.* Applicant has a clear plan of services to address documented needs within a defined geographic area and in a specified time period. The plan of services is appropriate to the type of grant requested (e.g., Immediate or Intermediate) and specifically addresses the needs of any high risk groups or populations with special concerns identified in the assessment of need. The plan of services clearly identifies the following:

(a) The types of services to be provided (e.g., outreach, crisis counseling, public education on stress management and crisis mental health, public education on substance abuse prevention, information and referral services, short term substance abuse or mental health prevention and/or treatment services);

(b) Strategies for targeting those identified as needing services, including high risk groups or populations with special concerns identified in the needs assessment;

(c) Appropriate training to be provided to staff to assure that services are appropriate to the crisis situation and the plans for community recovery;

(d) Quality control methods in place to assure appropriate services to the target population;

(e) Staff support mechanisms that are available;

(f) Plans for coordination of services with key local, State, Tribal and Federal partners involved in addressing the precipitating event (e.g., emergency management agencies, law enforcement, education agencies, public health agencies, and other agencies active in crisis response); and

(g) An estimate of the length of time for which said services requiring Federal funding will be needed, and the manner in which long-term cases will be referred for continued assistance after Federal funds have ended.

(3) *Organizational Capability.* Applicant is a public entity with demonstrated organizational capacity to deliver services as described in the plan

of services. The applicant should also have a demonstrated history of service delivery to the target population within the defined service area for the program. The budget submitted shall provide sufficient justification and demonstrate that it is consistent with the documentation of need and plan of services. This shall include a description of the facilities to be utilized, including plans for securing office space if necessary to the project.

(b) In determining the appropriateness and necessity of funding, the Secretary may consult with other Federal agencies responsible for responding to crisis incidents, including the Readiness, Response and Recovery Directorate within the Federal Emergency Management Agency (FEMA), the Safe and Drug Free Schools Program within the U.S. Department of Education, the Office for Victims of Crime (OVC) within the U.S. Department of Justice, the National Transportation Safety Board (NTSB) within the U.S. Department of Transportation, the Emergency Response Program within the Environmental Protection Agency (EPA), the Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior, the Animal and Plant Health Inspection Service within the U.S. Department of Agriculture, the Indian Health Service (IHS) within the U.S. Department of Health and Human Services, and other Federal agencies with jurisdiction over specific types of crisis response.

**§ 51d.7 What are the limitations on how award funds may be used?**

*Unallowable Expenses:* The following expenses will not be reimbursed under section 501(m) of the PHS Act:

(1) Major construction costs;

(2) Childcare services, unless provided by the institution or entity providing mental health or substance abuse treatment and integral to the treatment program;

(3) Services outside of the geographic area specified in the application, except to the extent that the precipitating event requires physical relocation of either affected parties or facilities;

(4) Any mental health or substance abuse services not directly related to the mental health or substance abuse emergency;

(5) Any expenses that supplant ongoing local, State, Tribal or Federal expenditures; and

(6) Any other costs unallowable by Federal law or regulation.

**§ 51d.8 Which other HHS regulations apply to these awards?**

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

- 42 CFR part 50, subpart D—Public Health Service grant appeals procedure
- 45 CFR part 16—Procedures of the Departmental Grant Appeals Board
- 45 CFR part 74—Administration of grants
- 45 CFR part 75—Informal grant appeals procedures
- 45 CFR part 76—Debarment and suspension from eligibility for financial assistance
- 45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of title VI of the Civil Rights Act of 1964
- 45 CFR part 81—Practice and procedure for hearings under part 80 of this title
- 45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance
- 45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefitting from Federal financial assistance
- 45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
- 45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to state and local governments

**§ 51d.9 What other conditions apply to these awards?**

Award funding made under this authority is to be supplemental in nature. Consistent with the criteria in § 51d.5 and the certification in § 51d.4(a)(1), such funds will only be made available if no other local, State, Tribal or Federal source is available to adequately address the emergency mental health and/or substance abuse service needs of the impacted community.

**§ 51d.10 What are the reporting requirements?**

- (a) For immediate awards:
  - (1) A mid-program report only if an Intermediate award application is being prepared and submitted. This report shall be included as part of the Intermediate award application,
  - (2) Quarterly financial status reports of expenditures to date, due 30 days

following the end of the reporting period, as permitted by 45 CFR 92.41(b).

(3) A final program report, a financial status report, and a final voucher 90 days after the last day of immediate award services, in accordance with 45 CFR 92.50(b).

(b) For intermediate awards:

(1) Quarterly progress reports, due 30 days following the end of the reporting period, as permitted by 45 CFR 92.40(b).

(2) Quarterly financial status reports of expenditures to date, due 30 days following the end of the reporting period, as permitted by 45 CFR 92.41(b).

(3) A final program report, to be submitted within 90 days after the end of the program services period, in accordance with 45 CFR 92.50(b).

(4) A financial status report, to be submitted within 90 days after the end of the program services period, in accordance with 45 CFR 92.50(b).

(5) Such additional reports as the Secretary may require.

(c) The following shall be specifically addressed in final program reports:

- (1) Description of services provided,
- (2) Number of individuals assisted,
- (3) Amount of funding expended and for what purposes,
- (4) Personnel costs,
- (5) Training costs,
- (6) Technical consultation costs,
- (7) Equipment costs,
- (8) Travel and transportation costs,

and

(9) A narrative describing lessons learned and exemplary practices, and a description of the transition plan, for how services will be funded or provided when Federal funds have been exhausted.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 572

[Docket No. NHTSA-2000-8057]

RIN 2127-AH87

#### Anthropomorphic Test Dummy; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This document amends the neck lateral calibration specifications for the SID/HIII dummy. This dummy is employed in side impact pole tests

which assess the effectiveness of dynamically-deployed head impact protection systems. In these tests, the subject vehicle is towed sideways into a pole in such a way that the center of gravity of the head of a seated SID/HIII dummy is aligned with the pole. Data collected from these tests are used to evaluate the performance of dynamically-deployed head impact protection systems.

This final rule responds to a petition for rulemaking filed by the Alliance of Automobile Manufacturers. That petition indicated that the neck lateral bending calibration corridor then specified for the SID/HIII dummy was defined incorrectly. After reviewing the petition, other data and comments submitted in response to the agency's prior notice of proposed rulemaking, the agency is revising the neck corridor specifications.

**DATES:** The amendment is effective on December 10, 2001.

Petitions for reconsideration of the final rule must be received by November 26, 2001.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Stan Backaitis, Office of Crashworthiness Standards at 202-366-4912.

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at 202-366-2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 201, Head Impact Protection, provides a number of alternative performance requirements for manufacturers of vehicles with dynamically deployed interior head protection systems. One of these alternatives uses a test in which a vehicle is propelled sideways at a speed of 29 km/h (18 mph) into a 254 mm (10 inch) diameter rigid pole. A Part 572 Subpart M anthropomorphic test dummy is placed in the outboard front seat on the struck side of the vehicle.

The specifications for the Subpart M dummy, known as SID/HIII, were established by a final rule published in the **Federal Register** on August 4, 1998 (63 FR 41466). The SID/HIII is based on

two other dummies: (1) the Part 572, Subpart F anthropomorphic test device (Side Impact Dummy or SID) that is used in testing under FMVSS 214, Side Impact Protection, and (2) the Part 572, Subpart E anthropomorphic test device (Hybrid III or HIII) that is used in testing under FMVSS 208, Occupant Crash Protection. The SID/HIII combines the head and neck of the Hybrid III with the torso and lower extremities of the Side Impact Dummy through the use of a redesigned neck to torso adapter bracket.

As the performance of the dummy is critical in any test, the specifications for the SID/HIII include calibration tests used to validate the characteristics of the individual device. One of these tests is the neck lateral bending corridor. It establishes maximum and minimum values for the dummy neck that it must meet when subjected to a calibration test in lateral impact direction.

##### B. Petition for Rulemaking

On July 28, 1999, the Alliance of Automobile Manufacturers (Alliance) submitted a Petition for Technical Correction indicating that the specified lateral impact neck corridor for the SID/HIII dummy does not reflect the neck stiffness of the Hybrid III dummy as originally specified by the SAE Side Impact Dummy Task Force (SIDTF) in the minutes of the Task Force meeting of April 15, 1989. According to the Alliance, subsequent to the April 15, 1989 meeting, the SIDTF made a transcription error when it drew up lateral calibration specifications for the Hybrid III neck. The Alliance stated that the erroneous calibration specifications were carried forward and incorporated by the SAE in the BioSID user manual in 1989. As the BioSid neck and the Hybrid III neck are identical in design but not in performance specifications, and the BioSid user manual was the only publication available to the public containing the lateral neck calibration values, the erroneous values were used by NHTSA in rulemaking for the SID/HIII dummy.

The agency proposed the SID/HIII dummy on December 8, 1997 and added it to Part 572 as Subpart M on August 4, 1998. As added to Part 572, the SID/HIII dummy incorporated the erroneous neck specifications that were contained in the BioSID user manual. As a result of this error, the lateral calibration corridor specified a neck that was stiffer in bending in the lateral direction than in the flexion and extension directions. Existing biomechanical data indicate that the human neck is not stiffer in the lateral direction, but actually has similar bending stiffness in both directions.