

applicable to Honeywell International Inc. TPE331-10 and TPE331-11 series turboprop engines, was published in the **Federal Register** on June 22, 2010 (75 FR 35354). The proposed rule would have added 360 S/Ns to the applicability of AD 2009-17-05. The proposed actions were intended to prevent uncontained failure of the first stage turbine disk and damage to the airplane.

Since we issued that NPRM, we decided not to supersede AD 2009-17-05, as doing so would require us to bring forward the effectivity dates for removal or inspection of the suspect turbine disks listed in the AD. Instead, we are planning to issue a new NPRM that will address the additional 360 turbine disk S/Ns requiring inspection or removal.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. FAA-2009-0555, published in the **Federal Register** on June 22, 2010 (75 FR 35354), is withdrawn.

Issued in Burlington, Massachusetts, on July 22, 2011.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2011-19048 Filed 7-27-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2011-0571; FRL-9444-6]

#### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

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**SUMMARY:** In this action, we are proposing to approve San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 3170,

“Federally Mandated Ozone Nonattainment Fee,” as a revision to SJVUAPCD’s portion of the California State Implementation Plan (SIP). Rule 3170 is a local fee rule submitted to address section 185 of the Clean Air Act (CAA or Act). EPA is also proposing to approve SJVUAPCD’s fee-equivalent program, which includes Rule 3170 and state law authorities that authorize SJVUAPCD to impose supplemental fees on motor vehicles, as an alternative to the program required by section 185 of the Act. We are proposing that SJVUAPCD’s alternative fee-equivalent program is not less stringent than the program required by section 185, and, therefore, is approvable, consistent with the principles of section 172(e) of the Act. As part of this action, we are inviting public comment on whether it is appropriate for EPA to consider alternative programs and, if so, what would constitute an approvable alternative program. We are taking comments on these proposals and plan to follow with a final action.

**DATES:** Any comments must arrive by August 29, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0571, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lily Wong, EPA Region IX, (415) 947-4114, [wong.lily@epa.gov](mailto:wong.lily@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

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#### I. What did the State submit?

On May 19, 2011, SJVUAPCD adopted Rule 3170 as part of SJVUAPCD’s alternative fee-equivalent program. On June 14, 2011, the California Air Resources Board (CARB) submitted SJVUAPCD’s alternative fee-equivalent program, including Rule 3170 and various state law authorities, to EPA. On June 23, 2011, EPA determined that the submittal met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

#### II. What action is EPA taking?

EPA is proposing to approve SJVUAPCD Rule 3170 as a revision to SJVUAPCD’s portion of the California SIP. Rule 3170 is a local rule that applies to all major stationary sources emitting VOCs and/or NO<sub>x</sub>. Rule 3170 requires certain major stationary sources to pay a fee for each ton of VOCs or NO<sub>x</sub> emitted in excess of 80% of baseline emissions. Rule 3170 includes an exemption for “clean units” and a different calculation of baseline emissions than specified by CAA section 185. Therefore, Rule 3170 also requires SJVUAPCD to track actual NO<sub>x</sub> and VOC emissions from all major stationary sources of NO<sub>x</sub> and VOCs and demonstrate that it received revenues, pursuant to an alternative mechanism described below, equivalent

to those that would be imposed through section 185 of the Act without the “clean unit” exemption, and with a baseline calculated in a manner consistent with CAA 185. Rule 3170 also requires SJVUAPCD to impose additional fees on major stationary sources to remedy any shortfall in revenue. In this action, EPA is also proposing to approve SJVUAPCD’s fee-equivalent program as an alternative to the program required by section 185 of the Act. SJVUAPCD’s alternative fee-equivalent program includes Rule 3170 and state law authorities that authorize the District to impose a \$12 supplemental fee on motor vehicle registrations. We are proposing that SJVUAPCD’s alternative fee-equivalent program is not less stringent than the program required by section 185, and, therefore, is approvable, consistent with the principles of section 172(e) of the Act as explained more fully below. We are taking comments on these proposals and plan to follow with a final action.

In a separate interim final action, published in the Rules section in today’s **Federal Register**, we are deferring sanctions that would otherwise apply to the SJVUAPCD.

### III. Background

#### *Section 185 Fees*

Under Sections 182(d)(3), (e), (f) and 185 of the Act, States with ozone nonattainment areas classified as severe or extreme are required to submit a revision to the SIP which requires major stationary sources of VOC or NO<sub>x</sub> to pay a fee for each ton of VOC or NO<sub>x</sub> emitted in excess of 80% of baseline emissions.<sup>1</sup> Under section 185(a) of the Act, the SIP revision must provide that the fees be paid, if the area to which the SIP revision applies has failed to attain the 1-hour ozone standard by the applicable attainment date. A source’s baseline emissions are its actual emissions during the required attainment year. The fee rate is \$5,000 per ton in 1990 dollars, which must be adjusted for inflation based on the Consumer Price Index (CPI).

#### *San Joaquin Valley Unified Air Pollution Control District*

SJVUAPCD is an extreme nonattainment area for the 1-hour ozone standard, and therefore, California was required under sections 182(d)(3), (e) and (f) to develop and submit a SIP revision meeting the requirements of

section 185, which are discussed above. In San Joaquin Valley, under California law, the SJVUAPCD is responsible for developing rules, such as Rule 3170, that are intended to meet CAA SIP requirements. Such rules are then submitted to EPA after adoption by CARB, which is the State agency responsible for SIP matters on behalf of the State of California.

CARB previously submitted an earlier version of SJVUAPCD Rule 3170 to EPA. EPA took final action on this earlier version of Rule 3170 on January 13, 2010. (75 FR 1716). This final action was a limited approval/limited disapproval because, while EPA found that the rule strengthened the SIP, EPA also found that it did not fully comply with the requirements of section 185. EPA identified the following deficiencies as preventing full approval: (i) An exemption for units that began operation after the attainment year; (ii) an exemption for “clean units;” (iii) the definition of the baseline period as two consecutive years; (iv) a provision to allow averaging of baseline emissions over 2–5 years); and (v) a definition of “major source” inconsistent with the CAA. Because our action was a limited approval and a limited disapproval, our action started sanctions clocks under section 179 of the Act and 40 CFR 52.31.

On June 14, 2011, CARB submitted SJVUAPCD’s alternative fee-equivalent program, including amended Rule 3170 as adopted on May 19, 2011 and other state law authorities, to address deficiencies identified in EPA’s limited disapproval, to stop the sanctions clocks, and to satisfy SJVUAPCD’s obligations under section 185 of the Act.

### IV. What is the legal rationale for equivalent alternative programs?

EPA is proposing that states can meet the 1-hour ozone section 185 obligation through a SIP revision containing either the fee program prescribed in section 185 of the Act, or an equivalent alternative program. As further explained below, EPA is proposing that an alternative program may be acceptable if EPA determines, through notice-and-comment rulemaking, that it is consistent with the principles of section 172(e) of the CAA.<sup>2</sup>

<sup>2</sup> EPA has previously set forth this reasoning in a memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Division Directors, “Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS,” January 5, 2010. On July 1, 2011, the DC Circuit Court of Appeals vacated this guidance, on the ground that it was final agency action for which notice-and-comment rulemaking procedures were required. *NRDC v. EPA*, No. 10–1056, 2011 WL 2601560, C.A.D.C. 2011. In today’s notice, we are applying the court’s

Section 172(e) is an anti-backsliding provision of the CAA that requires EPA to develop regulations to ensure that controls in a nonattainment area are “not less stringent” than those that applied to the area before EPA revised a national ambient air quality standard (NAAQS) to make it less stringent. In the Phase 1 ozone implementation rule for the 1997 ozone NAAQS published on April 30, 2004 (69 FR 23951), EPA determined that although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, it was reasonable to apply the same anti-backsliding principle that would apply to the relaxation of a standard for the transition from the 1-hour NAAQS to the more stringent 1997 8-hour NAAQS. As part of applying the principles in section 172(e) for purposes of the transition from the 1-hour standard to the 1997 8-hour standard, EPA can either require states to retain programs that applied for purposes of the 1-hour standard, or alternatively can allow states to adopt alternative programs, but only if such alternatives are determined through notice-and-comment rulemaking to be “not less stringent” than the mandated program.

EPA has identified three possible types of alternative programs that could satisfy the section 185 requirement: (i) Those that achieve the same emissions reductions; (ii) those that raise the same amount of revenue and establish a process where the revenues would be used to pay for emission reductions that will further improve ozone air quality; and (iii) those that would be equivalent through a combination of both emission reductions and revenues. Accordingly, we are proposing to determine through notice-and-comment rulemaking, that States can demonstrate an alternative program’s equivalency by comparing expected fees and/or emissions reductions directly attributable to application of section 185 to the expected fees and/or emissions reductions from the proposed alternative program. Under an alternative program, states might opt to shift the fee burden from a specific set of major stationary sources to non-major sources, such as owners of mobile sources that also contribute to ozone formation. EPA also believes that alternative programs, if approved as “not less stringent” than the section 185

directive to follow the rulemaking requirements set forth in the Administrative Procedures Act to inform our consideration of section 185 and alternative fee programs. We are therefore inviting the public to comment on whether it is appropriate for EPA to consider an alternative program and, if so, whether SJVUAPCD’s program would constitute an approvable alternative program under the CAA.

<sup>1</sup> VOCs help produce ground-level ozone and smog, which harm human health and the environment. NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment.

fee program, would encourage 1-hour ozone NAAQS nonattainment areas to reach attainment as effectively and expeditiously as a section 185 fee program, if not more so, and therefore satisfy the CAA's goal of attainment and maintenance of the NAAQS.

In sum, in order for EPA to approve an alternative program as satisfying the 1-hour ozone section 185 fee program SIP revision requirement, the state must demonstrate that the alternative program is not less stringent than the otherwise applicable section 185 fee program by collecting fees equal to or exceeding the fees that would have been collected under 185.

#### V. What is EPA's analysis of SJVUAPCD's alternative program?

##### *Summary of SJVUAPCD's Alternative Program*

SJVUAPCD's alternative fee-equivalent program consists of Rule 3170 and additional state law materials, including California Assembly Bill 2522 ("AB2522"), now codified at California Health and Safety Code 40610–40613. Rule 3170 applies to major stationary sources of VOCs and NO<sub>x</sub>, which in the SJVUAPCD are sources that emit 10 tons per year or more of either pollutant. Rule 3170 differs from CAA section 185 because it exempts "clean units" from the assessment of fees and because it allows baseline emissions to be calculated over a multi-year period, rather than a single year as provided in CAA section 185.<sup>3</sup> Because these differences will likely affect the amount of fees collected from major stationary sources, SJVUAPCD's alternative fee-equivalent program provides for the collection of additional fees from motor vehicle registrations, specifically, \$12 per year per motor vehicle, as authorized by California AB2522. (Cal. Health and Safety Code §§ 40610–40613).

Rule 3170 requires the Air Pollution Control Officer (APCO) to prepare and submit to EPA an "Annual Fee Equivalency Demonstration Report" to show that the total annual fees collected from stationary sources and motor vehicle registrations are at least equal to the amount of annual fees that would have been collected from stationary sources under a fee program as prescribed in section 185 of the Act. If the report shows that the actual collected funds are insufficient to demonstrate equivalency, Rule 3170

requires the collection of additional fees from stationary sources to make up the shortfall. EPA's technical support document (TSD) has more information about SJVUAPCD's alternative fee-equivalent program.

##### *How is EPA evaluating SJVUAPCD's alternative program?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act). Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.

Also, SIP revisions must not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act (CAA 110(l)).

SJVUAPCD's alternative fee-equivalent program must also be evaluated against section 185 of the Act, as described above under section III of this document. EPA also developed the following guidance on establishing baselines under section 185:

4. Memorandum from William Harnett, Director of the Air Quality Policy Division to the Regional Air Division Directors, entitled, "Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date," March 21, 2008.<sup>4</sup>

##### *Does SJVUAPCD's alternative program meet the evaluation criteria?*

We believe SJVUAPCD's alternative fee-equivalent program is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and sections 172(e) and 185 of the Act.

First, we propose to determine that our approval of Rule 3170 as revised would comply with CAA sections 110(l) because the proposed SIP revision

would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and is more stringent than the version previously approved into the SIP because it corrects the previously-identified deficiencies.

Second, EPA is proposing to find that SJVUAPCD has met its 1-hour ozone NAAQS section 185 obligation through its alternative fee-equivalent program, which includes Rule 3170 and additional state law authorities. Specifically, EPA is proposing to find that SJVUAPCD's alternative fee-equivalent program is acceptable because, consistent with the principles of section 172(e), it is not less stringent than the requirements of section 185.

The version of Rule 3170 we are proposing to approve today contains two provisions that are not directly consistent with section 185: (1) An exemption for "clean units;" and (2) an allowance for an alternate baseline period of two consecutive years (2006–2010) if the APCO determines it would be more representative of normal operations. As described below, EPA has determined that SJVUAPCD's alternative fee-equivalent program will make up for any shortfall in collected funds that might result from these two provisions and provides adequate enforcement and oversight mechanisms, as well as a remedy to address any shortfalls, to assure equivalency.

SJVUAPCD's alternative fee-equivalent program provides for the collection of additional fees from motor vehicle registrations, specifically, \$12 per year per motor vehicle. This collection of motor vehicle registration fees is authorized by California AB2522 (now codified at Health and Safety Code 40610–40613). AB2522 also requires SJVUAPCD to use these revenues to fund incentive-based programs resulting in NO<sub>x</sub> and VOC emissions reductions in the San Joaquin Valley. Rule 3170 requires the APCO to implement a system to track all information with respect to emissions data, the calculation, assessment, and collection of fees from stationary sources, as well as tracking of the amount of collected motor vehicle registration fees. The APCO is required to prepare and submit to EPA an "Annual Fee Equivalency Demonstration Report" that shows that the sum of the total fees collected from stationary sources and motor vehicle registrations are equal to or greater than the fees that would have been collected under a direct implementation of section 185. In the event that the annual equivalency report shows insufficient funds collected (i.e., a shortfall), Rule 3170 requires the collection of

<sup>3</sup> The CAA and EPA's Section 185 baseline guidance (referenced below in this section) allow for alternative baseline periods only if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

<sup>4</sup> This guidance can be found at: [http://www.epa.gov/ttn/oarpg/t1/memoranda/20080321\\_harnett\\_emissions\\_baseline.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/20080321_harnett_emissions_baseline.pdf).

additional funds from stationary sources.

SJVUAPCD has demonstrated that its alternative fee-equivalent program will be at least as stringent as a CAA section 185 fee program. Rule 3170 provides SJVUAPCD the authority to collect fees from certain major sources. To the extent that Rule 3170 differs from CAA section 185 by exempting certain major stationary sources and allowing a different baseline calculation, AB2522 allows SJVUACPD to assess supplemental motor vehicle registration fees equivalent to those that would be collected through a straight section 185 fee program, and requires SJVUAPCD to use those revenues to fund incentive-based programs resulting in NO<sub>x</sub> and VOC emissions reductions in the San Joaquin Valley. Although we are not approving AB2522 into the SIP, Rule 3170 provides adequate oversight and enforcement mechanisms through the Annual Fee Equivalency Demonstration Report and the shortfall remedy to assure that SJVUAPCD's fee-equivalent alternative program will be at least as stringent as a section 185 fee program. We therefore conclude that SJVUAPCD's alternative fee-equivalent program is consistent with the principles of CAA section 172(e) and not less stringent than the requirements of CAA section 185 because it will result in collection of fees equal to the fees that would be collected under section 185. Based upon SJVUAPCD's demonstration that its alternative fee-equivalent program is not less stringent than a section 185 program, EPA proposes to approve Rule 3170 into the California SIP on the basis that SJVUAPCD's alternative fee-equivalent program meets the requirements of sections 172(e) and 185 of the Act.

The TSD has more information on our evaluation.

## VI. Proposed Action

Because EPA believes SJVUAPCD Rule 3170 fulfills all relevant requirements, we are proposing to approve Rule 3170 as a SIP revision under section 110(k)(3) of the Act. EPA believes that SJVUAPCD's alternative fee-equivalent program is not less stringent than the requirements set forth in section 185 of the Act, therefore we are proposing to approve SJVUAPCD's alternative fee-equivalent program consisting of Rule 3170 and state law authorities as fulfilling the requirements of sections 185 and 172(e) of the Act.

We will accept comments from the public on these proposals for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final

approval action that will incorporate Rule 3170 into the federally enforceable SIP. Our final action would address the CAA section 185 requirements for the 1-hour ozone standard and therefore would permanently terminate the sanctions clocks associated with our January 13, 2010 action on the effective date of the final approval.

## VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible

methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 19, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011-18991 Filed 7-27-11; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1075]

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On October 27, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 74 FR 55168. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Peoria County, Illinois, and Incorporated Areas. Specifically, it addresses the following flooding sources: Dry Run Creek, Illinois River, and Kickapoo Creek.

**DATES:** Comments are to be submitted on or before October 26, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA-B-1075, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency