U.S.C. 7545(i)(4)) and 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12866,[5] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[6]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

IX. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Today's action to extend the temporary exemption of the low sulfur diesel fuel requirements in the State of Alaska until October 1, 1998, or until such time as the Agency proposes to act on the states request for a permanent exemption, whichever period of time is shorter, will not result in any additional economic burden on any of the affected parties, including small entities involved in the oil industry, the automotive industry and the automotive service industry. EPA is not imposing any new requirements on regulated entities, but instead is continuing an exemption from a requirement which makes it less restrictive.

Therefore, the Administrator has determined that this direct final decision will not have a significant impact on a substantial number of small entities, and that a regulatory flexibility analysis is not necessary in connection with this decision.

X. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 544 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

XI. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

XII. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate with estimated costs to the private sector of $100 million or more, or to state, local, or tribal governments of $100 million or more in the aggregate. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this direct final rule imposes no new federal requirements and does not include any federal mandate with costs to the private sector or to state, local, or tribal governments. Therefore, the Administrator certifies that this direct final rule does not require a budgetary impact statement.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Diesel fuel, Motor vehicle pollution.

Dated: August 12, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–21078 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

[5] 58 FR 51736 (October 4, 1993)

[6] *Id.* at section 3(f)(1)–(4).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1336

RIN 0970–AB37

Native American Programs

AGENCY: Administration for Native Americans, Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: On September 30, 1992, the Congress passed the Older Americans Act Amendments of 1992 (Pub. L. 102–375), amending the Native American Programs Act of 1974. In accordance with these amendments, the Administration for Native Americans (ANA) is amending 45 CFR Part 1336 to incorporate an appeals procedure for ANA ineligible applications. This action affords the applicants in ANA grant program announcement areas the opportunity to appeal the rejection of an application based on a finding that either the applicant or the proposed activities are ineligible for funding. A successful appeal would lead to reconsideration of the application in the next cycle of grant proposals following the HHS Departmental Appeals Board's determination to uphold the appeal. It does not guarantee ANA approval for grant funding.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: R. Denise Rodriguez (202) 690–6265, Department of Health and Human Services, Administration for Children and Families, 200 Independence Avenue SW., Room 348–F, Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION:

I. Program Description

In 1974, the Native American Programs Act (the Act) was enacted as Title VIII of the Economic Opportunity Act of 1964, (Pub. L. 93–644) (42 U.S.C. 2991a *et seq.*) to promote the goal of social and economic self-sufficiency for

American Indians, Alaska Natives, and Native Hawaiians. The legislation was subsequently amended by the Older Americans Act Amendments of 1987 (Pub. L. 100–175), which extended eligibility to Native American Pacific Islanders (including American Samoan Natives), and the Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. 101–408) and the Indian Reorganization Act Amendments (Pub. L. 100–581). Most recently it was amended by the Older Americans Act Amendments of 1992 (Pub. L. 102–375); the Native American Languages Act of 1992 (Pub. L. 102–524); Technical Amendments to Certain Indian Statutes, 1992 (Pub. L. 102–497); and the Older Americans Act Technical Amendments of 1993 (Pub. L. 103–171).

Background

Financial assistance provided by ANA, under the Act, is designed to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through programs and projects that: (1) Advance locally developed social and economic development strategies (SEDS) and strengthen local governance capabilities as authorized by § 803(a); (2) preserve Native American languages authorized by § 803C; (3) improve the capability of the governing body of the Indian tribe to regulate environmental quality authorized by § 803(d); and (4) mitigate the environmental impacts to Indian lands due to Department of Defense activities. The funding for the mitigation of environmental impacts to Indian lands due to Department of Defense activities is authorized by § 8094A of the Department of Defense Appropriations Act, 1994 (Pub. L. 103–139), and § 8094A, the Department of Defense Appropriations Act, 1995 (Pub. L. 103–335). The Act also authorizes a Hawaiian Loan Program in § 803A. Under this program, ANA makes grants to the Office of Hawaiian Affairs of the State of Hawaii to support a revolving loan fund. Because of the unique nature of this program, an appeal is unlikely to arise under it, and for this reason ANA has not addressed the question of eligibility of organizations or activities under this program in the regulations.

II. Discussion of Final Rule

A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on April 21, 1995 (60 FR 19994). No comments were received. However, we have made changes to the final rule for the benefit of all parties concerned. We now identify the Departmental Appeals Board (DAB) as the body that is delegated the authority to review appeals instead of the Assistant Secretary for Children and Families as set forth in the NPRM. On reconsideration of the NPRM, we determined that it would be logical for the DAB to hear ANA grants eligibility determination appeals, since the DAB already handles appeals regarding various grant programs administered by the Department, including appeals of terminations, suspensions and denials of refunding under ANA grant programs pursuant to 45 CFR 1336.52(c)(2). Accordingly, the Assistant Secretary has delegated the appeals process to the DAB. The Assistant Secretary's delegation to the DAB strengthens the appeals process and affords administrative convenience, beneficial to all parties concerned. For purposes of clarification, we have revised our descriptions of eligible applicants as described below.

Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders were added under 45 CFR 1336.33(a)(1) to the list of organizations eligible for funding under the Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages programs. This new category of organizations was added to make it clear that such organizations are eligible to apply for funding under these programs. These organizations would have qualified under the proposed categories, but the addition of this category will clearly establish the eligibility of such organizations. The final regulations include a separate listing at § 1336.33(a)(2) of eligible organizations for the Alaska-Specific Social and Economic Development Strategies (SEDS) Projects. These organizations were listed under the eligible organizations for the SEDS program. The separate listings are necessary because Alaskan organizations can elect to apply under either the SEDS competition or the Alaska-Specific Social and Economic Development Strategies Project. In the final rule, § 1336.33(a)(4), which was (a)(3) in the NPRM, we have added Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects and other tribal or village organizations or consortia of Indian tribes to the list of eligible organizations for the program on the improvement of the capability of tribal governing bodies to regulate environmental quality. We added these categories in recognition of the possibility that such organizations performed similar functions to the organizations listed in the NPRM.

The final rule establishes new procedures mandated by reauthorization legislation, the Older Americans Act Amendments of 1992 (Pub. L. 102–375, Title VIII, Subtitle C; ''Native American Programs Act Amendments of 1992''). The rule adds three new sections to 45 CFR Part 1336, Subpart C that lists the categories of eligible applicants and activities that are ineligible, § 1336.33, requirements for the notice of ineligibility, § 1336.34, and the procedures for appeal of such a determination, § 1336.35. Appeals will be governed by the Departmental Appeals Board regulations at 45 CFR Part 16, except as otherwise provided in these regulations.

A successful appeal under § 1336.35 would lead to reconsideration of the application in the next cycle of grant proposals. It does not guarantee ANA approval for grant funding. Furthermore, the decision that an application is deficient by ANA prior to competitive panel review for reasons other than applicant ineligibility or the ineligibility of proposed activities is not appealable under this section and in accordance with § 810(b) of the Act. The decision not to fund an application because it fails the competitive review panel also is not appealable under this section.

Section by Section Discussion of the Final Rule

In Subpart C, Part 1336, Native American Projects, we are including a new § 1336.33, ''Eligible applicants and proposed activities which are ineligible''. This section lists the categories of organizations which are eligible for four of the grant programs administered by ANA. An organization not within the categories specified for a program is not eligible to receive funding under that program.

The provision also lists activities which, based upon its experience in administering the program, ANA has declined to fund in the past. The Agency has found that these activities are by their nature of limited or no value in furthering the goals of the respective grant programs administered by ANA.

Paragraph (a)(1) lists categories of applicants eligible to apply for SEDS and Preservation and Enhancement of Native American Language grants. The categories are in accordance with Section 803(a) of the Native American Programs Act, as amended, and Section

803C, which provides that organizations eligible under Section 803(a) are also eligible for grants under the Native American languages program. The following are some examples of the eligible organizations listed in paragraph (a)(1): Federally recognized Indian Tribes; urban Indian Centers; consortia of Indian Tribes; Alaska Native villages as defined by the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia; public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands; public and nonprofit private agencies serving Native Hawaiians; and incorporated non-Federally recognized Tribes.

Applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the governing body of the Tribe. This interpretation of the requirements of the Act reflects the legal principle that Indian Tribes possess inherent governmental power over all internal affairs. See for example, *Merrion* v. *Jicarilla Apache Tribe,* 455 U.S. 130 (1982) (Tribe has inherent power to impose severance tax on mining activities). Attributes of sovereign authority of tribes extends over both their members and territory, except where that authority has been withdrawn or modified by treaty or Federal statute. *Iowa Mutual Insurance Co.* v. *LaPlante,* 480 U.S. 9, 14 (1987). Tribes generally retain sovereignty by way of tribal self-government and control over other aspects of its internal affairs. *Brendale* v. *Confederated Tribes and Band of Yakima,* 109 S. Ct. 2994 (1989). When the eligibility requirements of § 803(a) are applied to such organizations it is appropriate to interpret the requirements in light of the principle that tribes have an inherent authority over their internal affairs and over their members. To do otherwise would undermine the ability of tribes to exercise that authority. It is also particularly important in such circumstances to have the support of the tribal government since the grant is intended to further the social and economic development of the tribe and its members.

ANA also has included in the final rule a requirement for its programs that ''[a]pplicants, other than tribes or Alaska Native Village governments, proposing a project benefiting Native Americans or Native Alaskans, or both, must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.'' We believe this requirement is consistent with the NPRM which made it clear from the proposed list of eligible organizations that in order to be eligible an organization had to be in some way representative of a Native American community. The requirement for an assurance of the representativeness of the organizations's board is only an elaboration of the existing requirement.

The requirements of paragraph (a)(1) set forth ANA's interpretation of the eligibility requirements of § 803(a) of the Act. The Agency has removed 45 CFR 1336.30(a) which restated the language of the statute. Continued use of that provision in the regulations would have caused confusion. In addition, ANA has removed 45 CFR 1336.30(c) which provided that projects in American Samoa, Guam and the Northern Mariana Islands received funding under § 803 ''subject to the availability of funds.'' This provision was based upon a requirement in § 803(a) which was deleted in 1992 by Pub. L. 102–497. In accordance with these removals, the heading of § 1336.30 has been changed to ''Eligibility under sections 804 and 805 of the Native American Programs Act of 1974''.

Paragraph (a)(2) lists 5 categories of applicants eligible to apply for funds under the Alaska-Specific Social and Economic Development Strategies Project. As explained earlier, this separate listing contains organizations that were in the NPRM but separate listings are necessary because Alaskan organizations can elect to apply under either the SEDS competition or the Alaska-Specific Social and Economic Development Strategies Project.

Paragraph (a)(3), which was (a)(2) in the NPRM, lists 5 categories of applicants eligible to apply for funds provided by the Department of Defense (DoD) and ANA for the purpose of mitigating environmental impacts on Indian Lands related to DoD activities. This list was derived from the Environmental Mitigation Program Announcement as published in the Federal Register: Availability of Financial Assistance; (58 FR 69106; December 29, 1993). ANA does not interpret Section 810(b) of the Act as requiring that applicants under the DoD program have a right to appeal rulings of ineligibility; however the ANA has decided as a matter of policy to include this program under the regulations.

Paragraph (a)(4), which was (a)(3) in the NPRM, lists 5 categories of applicants eligible to apply for funds for the improvement of the capability of tribal governing bodies to regulate environmental quality. The eligible categories of organizations are: (1) Federally recognized Indian Tribes; (2) incorporated non-Federally recognized Indian Tribes; (3) consortia of Indian Tribes; (4) Alaska Native villages as defined by the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia; (5) Tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs. The list of 5 categories is derived from the program announcement: Availability of Financial Assistance for Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality (59 FR 16650, April 7, 1994).

The provisions being added to the regulations do not include a list of organizations eligible for grants authorized by § 805 of the Act, which authorizes grants for research, demonstration and pilot projects. Eligibility under § 805 is addressed in part under the revised 45 CFR 1336.30. ANA is not currently awarding grants under this provision, nor does it have plans to do so. If, at some point in the future, it does issue an announcement for funding under § 805, the Agency will provide additional guidance on eligibility under that provision. Applicants for funding under § 805 who wish to appeal the rejection of an application based on a finding that either the applicant or the proposed activities are ineligible for funding will be able to do so by submitting an appeal as provided for by 45 CFR 1336.35.

Paragraph (b) provides a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974. (It is impossible to list all activities that would be considered eligible.) With the exception of one activity, the purchase of real estate, which is prohibited by law, the remaining activities listed are derived from ANA's past experiences in managing grants and working with organizations, both public and private. Several examples of these are:

(a) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. Third party T/TA is not an eligible activity because ANA believes it is inefficient to fund organizations which would otherwise be able to apply directly to ANA for T/TA funding;

(b) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan. ANA is not interested in funding ''wish

lists'' of business possibilities. This policy reflects ANA's belief that the limited amount of funds available to the Agency is better used to support activities which directly affect the well-being of the members of Native American communities;

(c) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs. This area is covered by other Federal programs and would result in a duplicative effort by ANA; and

(d) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions. ANA funds are used for specific projects that become self-sustaining and not for the on-going administration of tribes or organizations. (However, in Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.) This exception has been added because grantees for Alaska-Specific SEDS Projects at the village government level are frequently village governments or organizations performing governmental functions on behalf of village governments. In many instances, such funding is necessary to ensure that villages develop the minimum governmental services necessary to support social and economic development.

In section 1336.34, Notice of ineligibility, we require that upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant, by certified letter, of the decision. The notice must include a statement of the legal and factual grounds for the finding concerning eligibility, a copy of these regulations, and the statement regarding how to appeal the decision.

In section 1336.35, ''Appeal of ineligibility'', we are establishing the procedures an applicant must follow when seeking to appeal the ANA Commissioner's determination that an applicant, or proposed activities, are rejected on grounds of ineligibility. This section describes the steps that apply when seeking such an appeal. In accordance with the Native Americans Programs Act, Section 810(b), the applicant may make an appeal to the Secretary for review of the determination of ineligibility. The Secretary has delegated this authority to the Assistant Secretary. The Assistant Secretary has delegated to the DAB the review of appeals made under section 810(b). Except as otherwise provided in these regulations, Appeals will be governed by the DAB regulations at 45 CFR Part 16. Under this section, the applicant has 30 days following receipt of ineligibility notification to appeal, in writing, the Commissioner's ruling. The appeal must clearly identify the issues. Under this section, the Commissioner shall have 45 days to respond to the applicant's submission and the applicant 20 days to respond to the Commissioner's submission to DAB. The individual presiding over the appeal may request the parties to submit additional information within a specified time period before closing the record in the appeal. The DAB will provide a final written decision within 30 days of the closing of the record, unless the Board determines for good reason that a decision cannot be issued within the time period and so notifies the parties. If a determination is made by the DAB that the applicant or application is eligible, as required by law, the eligibility will not take effect until the next cycle of grant proposals are considered by ANA.

III. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles.

The final rule amends the current rules to establish an appeal procedure authorized by the Older Americans Act Amendments of 1992. It adds three new sections to 45 CFR Part 1336 that list the categories of eligible applicants and ineligible activities, set forth requirements for the notice of ineligibility, and establish procedures on how to appeal determinations of ineligibility made by the Commissioner, ANA. The final rule also deletes existing provisions from the regulations that are no longer applicable or are rendered obsolete by this final rule. We estimate that these regulations will not result in significant additional costs to the Federal government or Native American programs.

Regulatory Flexibility Act of 1995

Consistent with the Regulatory Flexibility Act [5 U.S.C. Ch. 6], we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities,'' we prepare an analysis describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While this rule affects small entities, i.e., Alaskan Native villages and non-profit organizations, based on past experience with respect to other appeals under ANA, we expect the impact to be minimal. For this reason, the Assistant Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule. This final rule does not contain any reporting or recordkeeping requirements, thus, no submission to OMB is required.

List of Subjects in 45 CFR Part 1336

Administrative practice and procedure, American Samoa, Appeals Grant programs—Indians, Grant programs—social programs, Guam, Indians, Native Hawaiians, Northern Mariana Islands, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Approved: July 23, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR Part 1336 is amended as follows:

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

1. The authority citation for Part 1336 continues to read as follows:

Authority: 42 U.S.C. 2991 *et seq.*

2. Section 1336.30 is amended by removing paragraphs (a) and (c), removing the designation (b) from the remaining paragraph, and revising the section heading to read as follows:

§ 1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.

* * * * *

3. Three new sections, §§ 1336.33, 1336.34 and 1336.35, are added to read as follows:

§ 1336.33 Eligible applicants and proposed activities which are ineligible.

(a) Eligibility for the listed programs is restricted to the following specified categories of organizations. In addition, applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the

governing body of the Tribe. If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.

(1) Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages:

(i) Federally recognized Indian Tribes;

(ii) Consortia of Indian Tribes;

(iii) Incorporated non-Federally recognized Tribes;

(iv) Incorporated nonprofit multi-purpose community-based Indian organizations;

(v) Urban Indian Centers;

(vi) National and regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

(vii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(viii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(ix) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

(x) Nonprofit Native organizations in Alaska with village specific projects;

(xi) Public and nonprofit private agencies serving Native Hawaiians;

(xii) Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);

(xiii) Tribally Controlled Community Colleges Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders; and

(xiv) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional councils) as recognized by the Bureau of Indian Affairs.

(Statutory authority: Sections 803(a) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b(a) and 42 U.S.C. 2991b–3)

(2) Alaska-Specific Social and Economic Development Strategies (SEDS) Projects:

(i) Federally recognized Indian Tribes in Alaska;

(ii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

(iii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(iv) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

(v) Nonprofit Native organizations in Alaska with village specific projects.

(3) Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Tribes;

(iii) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs.

(iv) Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; and

(v) Other tribal or village organizations or consortia of Indian Tribes. (Statutory authority: § 8094A of the Department of Defense Appropriations Act, 1994 (Public Law 103–139), § 8094A of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991h(b)).

(4) Improvement of the capability of tribal governing bodies to regulate environmental quality:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes: and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–2)

§ 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner's finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in § 810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail

(you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position. We are enclosing a copy of 45 CFR part 1336 which governs the conduct of appeals under § 810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

§ 1336.35 Appeal of ineligibility.

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[FR Doc. 96–20982 Filed 8–16–96; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

46 CFR Part 153

Coast Guard

CFR Correction

In title 46 of the Code of Federal Regulations, parts 140 to 155, revised as of October 1, 1995, on page 171, § 153.1046 was inadvertently omitted. The omitted text should read as follows:

§ 153.1046 Sulfuric acid.

No person may liquefy frozen or congealed sulfuric acid other than by external tank heating coils.

BILLING CODE 1505-01-D

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC–93–17]

RIN 2125–AD14

Federal Motor Carrier Safety Regulations; Intermodal Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; extension of effective date.

SUMMARY: The FHWA announces the extension of the effective date of its final rule, published on December 29, 1994, implementing provisions of the Intermodal Safe Container Transportation Act of 1992. The rule was scheduled to take effect on September 1, 1996, but the FHWA believes that further extension of the effective date until January 2, 1997, is appropriate based on the inability, to date, of the educational and informational outreach program undertaken by the FHWA to reach many foreign shippers; a request from several Senators to delay the effective date of this rule pending consideration of legislation to amend the Act; and two petitions received earlier by the FHWA for exemptions and amendments to the rule, which are currently outstanding.

DATES: The effective date of the final rule published on December 29, 1994, at 59 FR 67544 has been extended to January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On December 29, 1994, the FHWA published a final rule (59 FR 67544) which implemented the Intermodal Safe Container Transportation Act of 1992 (the Act) (Pub. L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901–5907 (formerly 49 U.S.C. 501 and 508)). On August 10, 1995 (60 FR 40761), the FHWA extended the rule's effective date until September 1, 1996, to allow the intermodal transportation industry sufficient time to comply by means of electronic data interchange, and to allow the FHWA, the intermodal transportation industry, and other parties enough time to inform affected domestic and foreign entities of their responsibilities. In April and August of 1995, the FHWA received two petitions for exemptions and amendments to the rule. The FHWA delayed the international distribution of pamphlets about the rule and other related educational projects until resolution of the petitions. On March 29, 1996, the petitioners along with an industry coalition requested that the FHWA delay its decision on the petitions and later notified the agency that they would seek legislative action to amend the Act. On July 16, 1996, a bill to amend the Act was introduced by the Chairman of the Senate Committee on Commerce, Science, and Transportation with co-sponsorship of the Chairman and ranking minority member of the Subcommittee on Surface Transportation and Merchant Marine. The bill (S. 1957) would raise the jurisdictional weight threshold from 4,536 kilograms (10,000 pounds) to 13,154 kilograms (29,000 pounds); reduce or eliminate paperwork burdens; provide clarification concerning applicability, requirements, and terminology; and establish additional liabilities. On July 23, 1996, the