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DEPARTMENT OF JUSTICE

28 CFR Part 20

[FBI Docket No. 118]

RIN 1110-AA29

FBI Records Management Division National Name Check Program Section User Fees

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FBI is authorized to establish and collect fees for providing fingerprint-based and name-based criminal history record information (CHRI) checks and other identification services submitted by authorized users for non-criminal justice purposes including employment and licensing. The fees may include an amount to establish a fund to defray expenses for the automation of criminal justice information services and associated costs. The proposed rule concerns the name-based checks conducted by the Records Management Division (RMD) in the National Name Check Program (NNCP).

The rule explains the methodology used to calculate the revised fees and provides a proposed fee schedule. After public comment, a final rule and notice of the final fee schedule will be published in the **Federal Register**.

DATES: Written comments must be received on or before November 25, 2008.

ADDRESSES: You may submit comments, identified by Docket No. FBI 118, by either of the following methods:

- *Federal Regulations Web site:* You may review this regulation on <http://www.regulations.gov> and use the comment form for this regulation to submit your comments. You must include Docket No. FBI 118 in the subject box of your message.

- *Mail:* You may use the U.S. Postal Service or other commercial delivery services to submit written comments to the FBI, Records Management Division, National Name Check Program Section, 1325 G Street, Room G-300, Washington, DC 20005, Attention: Michael A. Cannon.

To ensure proper handling, please reference Docket No. FBI 118 in your comment. When submitting written comments, please allow for delivery time plus at least two days for internal mail security scanning and delivery.

FOR FURTHER INFORMATION CONTACT:

Michael Cannon, FBI, Records Management Division, National Name Check Program Section, 1325 G Street, Room G-300, Washington, DC 20005, telephone number (202) 220-1198.

SUPPLEMENTARY INFORMATION:

- I. Posting of Public Comments
- II. Background
- III. Fee Calculation
- IV. Revised Fee Schedule
- V. Administrative
- VI. Regulatory Certifications

I. Posting of Public Comments

Please note that all comments on the proposed rule are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Additional Information" paragraph.

II. Background

For purposes of discussion, FBI user fees may be differentiated by the FBI Division providing the service. The user fees for the National Name Check

Program (NNCP) checks provided by the Records Management Division (RMD) are the subject of this rulemaking. Fees for the criminal history record information checks provided by the Criminal Justice Information Services Division (CJIS) are the subject of a separate rulemaking (Docket No. FBI 114, RIN 1110-AA26). The separate CJIS fee rule also proposes to amend 28 CFR 20.31. In the event that the CJIS fee rule is finalized first, the revisions proposed in this rulemaking to section 20.31(e) will be conformed with the changes contained in the CJIS fee rule.

The rulemaking process provides federal governmental agencies and the public the opportunity to review and comment on the methodology utilized by the FBI to implement its statutory authority to establish and collect fees and the proposed fee schedule, and advises that future fee adjustments will be made by notice published in the **Federal Register**. After analysis and response to the comment, a final rule and notice of the fee schedule will be published in the **Federal Register**. This rule will be published at Part 20 of 28 CFR.

FBI's Legal Authority To Collect Fees

The FBI has collected fees for NNCP checks since 1991, under the authority set out in Public Law 101-162. This law authorized the FBI to collect fees to process identification records and name checks for non-criminal justice purposes and to set such fees at a level to include an amount to defray expenses for the automation of fingerprint identification and associated costs. Congress, in Public Law 101-515, subsequently authorized the FBI to establish and collect these fees on a continuing basis.

National Name Check Program Services

Under Public Law 101-515, the FBI is authorized to charge a fee for non-criminal justice name-based checks for such purposes as immigration, Federal Government employment and security clearance processes. The FBI does not charge a fee for NNCP services performed for criminal justice purposes, which are supported by federal appropriations.

Reasons for the Proposed Fee Schedule

While the RMD has automated some portions of the NNCP process, the current fees, which have not changed since 1991, do not reflect the expense of personnel time and other costs involved in the analysis of the pertinent information. As explained below, the NNCP disseminates information from the FBI's Central Records System (CRS) in response to requests submitted by

federal agencies, Congressional committees, the federal judiciary, friendly foreign police and intelligence agencies. The CRS contains the FBI's administrative, personnel, and investigative files. The NNCP was established under Executive Order No. 10450, issued on April 27, 1953, 18 FR 2489, which mandated National Agency Checks (NAC) in the background investigation of prospective Government employees. The FBI performs the primary NAC on all U.S. government employees and provides information to more than 40 federal agencies based on fiscal year (FY) 2005 data. The information from the CRS, disseminated under the NNCP, is evaluated by governmental agencies before bestowing privileges such as visas, naturalization or work authorizations under the Immigration and Nationality Act, Public Law 82-414 as amended, and other federal laws.

The CRS consists of administrative, applicant, criminal, personnel, and other files arranged by subject matter relating to an individual, an organization, or other matter. The CRS records are maintained at FBI Headquarters and FBI Field Offices. The CRS can be accessed through the General Indices, which are arranged in alphabetical order by subject, such as the names of individuals and organizations.

In 1995, the FBI implemented the Automated Case Support ("ACS") system to access 105 million records from previous automated systems. The ACS consists of three automated applications that support case management functions for all investigative and administrative cases. The Investigative Case Management application is used to open, assign and track leads and close investigative and administrative cases. The Electronic Case File serves as the central electronic repository for the FBI's official text-based documents. The Universal Index (UNI) provides a complete subject and case index to approximately 99 million records in investigative and administrative cases. The UNI lists the names of individuals or entities, with identifying information such as date of birth and social security number.

The processing of an NNCP search begins with the search of a person's name in the UNI to locate all instances of the person's name and identifying information in the main and reference files. A main file concerns the subject of an FBI investigation, and a reference file concerns an individual whose name appears in part of an FBI investigation, such as an associate or witness. Over 60 percent of the initial NNCP electronic

checks in UNI yield no identifiable information regarding the person and are termed "No record," and that information is reported to the requesting agency. If the search of UNI yields possibly identifiable information, the NNCP request requires additional review and an additional manual name search is conducted. If identifiable information is located, the records are retrieved and reviewed for possible derogatory information concerning the subject of the NNCP request. The FBI forwards a summary of the derogatory information to the requesting agency.

By letter, dated August 30, 2007, to all RMD customers using the NNCP for non-criminal justice purposes, the FBI established the proposed fee schedule on an interim basis, effective October 1, 2007. That is the same process the FBI has followed in implementing changes in fees for other non-criminal justice identification services. Although the proposed rule will establish the user fees by notice and comment rulemaking, RMD customers were advised of the revised fees prior to the start of FY 2008, thereby allowing them to prepare for the changes.

The FBI will continue to analyze its costs in processing searches in the NNCP and will review related fee charges periodically, as recommended by Office of Management and Budget Circular No. A-25, (OMB Circular A-25) User Charges. The proposed rule advises that adjustments to the FBI's fees will be announced by notice in the **Federal Register**.

III. Fee Calculation

Cost Accounting Standards and Guidelines Used To Calculate the Fee

Public Law 101-515 links the user fees charged for processing name checks and fingerprint identification records to the cost of providing these services. Such costs not only include the salaries of employees engaged in providing the services but, in accordance with generally accepted accounting principles, also include such expenses as capital investment, depreciation, automation, and so forth. Congress recognized this by authorizing the FBI to establish user fees at a level to include an amount "to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs."

In the absence of express statutory authority, federal agencies are authorized to establish fees by the Independent Office Appropriation Act of 1952, 31 U.S.C. 9701, which is implemented by specific guidelines in

OMB Circular A-25. Since the FBI has specific statutory authority to establish and collect fees under Public Law 101-515, the FBI is not required to follow strictly the mandates of OMB Circular A-25. In establishing the fees set out in this proposed rule, however, the FBI did look to OMB Circular A-25 for guidance. For example, OMB Circular A-25's definition of "full cost" ("all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service") was used as a model by the FBI in establishing the subject user fees, including direct and indirect personnel costs, physical overhead, and other indirect costs such as material costs, utilities and equipment.

Calculation of the Revised Fee

The FBI hired a contractor, Grant Thornton LLP., 333 John Carlyle Street, Alexandria, Virginia 22314, (Grant Thornton) to conduct an independent analysis of pertinent costs and to recommend a revised fee schedule for the NNCP checks conducted by RMD. Referencing OMB Circular A-25; the Statement of Federal Financial Accounting Standards (SFFAS-4): Managerial Cost Accounting Concepts and Standards for the Federal Government; and other relevant financial management directives, Grant Thornton developed a cost accounting methodology and related cost models based upon the concept and principles of activity-based costing (ABC). The cost models identified the total resource costs associated with the services provided to RMD customers, including personnel (e.g., salary and benefits), non-labor (e.g., material, equipment, and facility) and overhead (e.g., management and administration) costs, and assigned or allocated these costs to the various service categories using relevant cost drivers. The cost drivers were selected primarily for their strong cause-effect linkages between the resources and the activities and services that consumed them. The unit costs for RMD's NNCP services incorporated in this study were derived from a robust costing network that is based on the principles of ABC, a widely recognized and accepted cost accounting methodology. Grant Thornton generated the revised fee schedule based upon these unit costs.

The methodology focused on developing full cost information for NNCP's activities and services to provide a basis for the fee recommendations. Generally accepted standards and regulatory guidance were followed, as specified by the Federal Accounting Standards Advisory Board's

(FASAB) Statement Number 4: Managerial Cost Accounting Concepts and Standards for the Federal Government and the Office of Management and Budget's (OMB) Circular A-25: User Charges. FY 2005 costs were used to develop baseline cost information, and additional estimated costs and adjustments were included to estimate resources for FY 2008 and FY 2009. The projected cost information served as the basis for the fee recommendations.

Grant Thornton developed their cost accounting methodology using the following steps for the non-automation portion of the fee.

- NNCP services and activities performed for name checks were defined.
- Operational labor costs were identified and assigned to activities and then to services.
- Support labor costs were identified and assigned to activities and then to services.
- Non-labor costs, including appropriate overhead and support costs, were identified and assigned to activities and then to services.
- Cost estimates were made for FY 2008, when the revised user fees are expected to be implemented.
- Transaction volumes and trends were analyzed to predict appropriate transaction volumes for fiscal year FY 2008.
- Finally, using the projected FY 2008 costs and the projected FY 2008 transaction volumes, the projected unit costs for each service were calculated. The recommended user fees were based on these projected unit costs.

As explained above, under Public Law 101-515, the FBI is also authorized to charge an additional amount for the automation of fingerprint identification and criminal justice information services and associated costs. Although NNCP fees have not included this additional amount to date, the FBI considers the service provided by the NNCP as being a criminal justice information service. The costs associated with enhancing the NNCP, including the automation efforts, were identified and included in the name check fee study reflected in this NPRM. The FBI is therefore proposing to add an automation surcharge to the NNCP fee pursuant to Public Law 101-515. The estimated costs for these automation efforts were based on best available information regarding planned IT investments. The projected FY 2008 and FY 2009 volumes were then used to calculate the unit costs for this portion of the fee. Once the unit costs were calculated, Grant Thornton generated

the revised fee schedule. The FBI then independently reviewed the Grant Thornton recommendations, compared them to current fee calculations and plans for future services, and determined that the revised schedules were both objectively reasonable and in consonance with the underlying legal authorities.

Overview of the Costs Included in the Fee Calculation

The fee calculation was produced by gathering the labor and non-labor costs of those divisions of the FBI that directly or indirectly support the provision of the NNCP name check services, and then using various drivers to assign those costs to the identified activities. The activities were then assigned to the specific name check service. The ABC model examined in detail only those costs which were related to the name check services. These services included both the criminal justice and law enforcement and the non-criminal justice identification services performed by the NNCP. The discussion below is limited to those costs in the ABC model which were assigned to name check services that are supported by the user fees. In other words, even though the ABC model calculated unit costs for all NNCP name checks, the costs for processing criminal justice name checks will not be discussed in this regulation since they are funded with appropriations and not with user fees.

The costs for providing the fee-supported name check services include the personnel costs for both direct and indirect support, as well as non-labor costs such as travel, training, rent, equipment, utilities, printing, contract support, and supplies. In addition, depreciation for existing non-automation assets were included per OMB Circular A-25 guidance. Finally, portions of the FBI costs for workers compensation, unemployment compensation, and the judgment fund used to pay judgments against the United States where appropriations have not otherwise been provided were included. These costs were derived from the FBI financial systems and other relevant information provided by FBI personnel. The FY 2008 predicted costs were obtained by adding an inflation factor for labor and other non-labor expenses and identifying other expected changes in cost. The OMB pay raise and inflation factors provided in OMB Circular A-11, Preparation, Submission, and Execution of an Agency Budget, were used. The costs associated with providing the services do not include any of the automation costs which

instead were based on capital investment planning for the automation portion of the fee described below. The costs for the additional charge for automation were based on the most recent NNCP estimates for planned systems automation and enhancement.

IV. Revised Fee Schedule

Proposed Changes to the Fee Schedule

The current NNCP fee schedule services are:

- Electronic (Batch Processed)
- File Review and Analysis
- Manual (Paper-Based Request)
- Expedite (Paper-Based Request)

FBI proposes a tiered fee structure that maintains the distinction between requests completed during the automated batch processing and those that must go on for additional file review and analysis (formerly referred to as indices popular). However, the recommended fee structure does maintain a distinction between requests submitted electronically or on paper. Manual requests represent approximately 3% of name checks processed, and NNCP is undertaking efforts to encourage customers to submit all name check requests electronically.

The proposed fee structure is:

- Electronic (Batch Processed)
- File Review/Analysis (Routine)
- File Review/Analysis (Expedited)

While there is not an expedite fee for batch processing (they are typically completed within a few days), the proposed fee structure does distinguish between routine processing and expedited processing for name checks that require additional review and analysis. The FBI receives some requests for expedited processing of name checks but does not currently charge an additional fee for the expedited service (except for a small number of manual requests). Expedited requests receive priority processing, and the expedited processing fee accounts for this difference in prioritization by charging the customer requesting expedited service a higher amount to reflect the preferential treatment and shorter processing time.

Discussion of Proposed Changes to the Fee Schedule

The fee structure described above was proposed for the following reasons:

- Reflects difference in cost. There is a significant difference between the unit cost of automated batch processing and file review and analysis. The recommended fee structure reflects this difference by charging a separate fee for these two phases of the name check process.

- Reflects customer choice. The recommended fee structure has separate fees for routine and expedited processing of name checks. This reflects a customer choice regarding which level of service to request.

- Move toward all electronic requests. The NNCP intends to have all name check requests provided by their customers in electronic format. The NNCP will develop a web interface to allow the customers to enter the appropriate data into the NNCP system rather than mail a hard copy request. Therefore, the recommended fee structure does distinguish between electronic and manual submission of name check requests.

- Less administrative burden. The recommended fee structure has fewer separate services so there are fewer services/fees to bill.

As mentioned previously, customers receiving expedited processing should be charged a higher fee compared to routine processing. Customers who receive expedited processing derive additional benefit because they receive preferential treatment; requests for routine processing must wait longer because the expedited requests get moved up in the queue.

The Independent Offices Appropriation Act (IOAA) serves as a government-wide authority on fee setting in the federal government. According to the IOAA, a user charge shall be based on:

- Costs to the Government
- Value of the service or thing to the recipient

- Public policy or interest served
- Other relevant facts

Regarding the value criterion, requests that receive expedited processing receive higher value when compared to those that receive routine processing. The expedited processing fee accounts for this added value by charging a higher fee because the request receives preferential treatment and is processed in a shorter period of time. Consideration was given to the difference in processing time for routine and expedited requests to calculate the

expedite fee. This data measured the average number of days involved in each type of request from the date received to the date finalized. This difference in processing time served as the basis for adjusting the fees for routine and expedited processing.

Detail of the Costs Used To Calculate the Fee

The costs were calculated based on the cost of providing NNCP name checks using the ABC model constructed by Grant Thornton. The costs include labor costs, non-labor costs (including unfunded personnel and judgment fund costs), automation costs; and general overhead and support costs. These costs are discussed in more detail below.

The cost structure reflects the type of cost and organizational structure of the NNCP and other FBI units involved in providing name check services. The NNCP costs are comprised of the following categories:

Labor—including personnel compensation (salary and benefits) for direct costs.

Center	FY2008
Name Check Center	\$9,982,910
Other Records Management Units	908,046
Field Office Support	8,278,415
Information Technology Support	233,569
Finance Division Support	64,247
Office of General Counsel	2,535,942
Document Scanning Support	2,923,911
Total	24,927,040

Non-labor includes direct and indirect non-labor expense data for the Name Check and RMD front office, contractor support, and depreciation.

Center	FY2008
Name Check/RMD	\$2,226,367
Batch Processing Enhancement	310,000
Contractor Support	12,318,813
Depreciation/Equipment Replacement	115,965

Center	FY2008
Document Scanning/Consumables	1,836,257
Total	16,807,402

Bureau overhead/support includes indirect costs to provide joint or common services to NNCP.

Center	FY2008
Office of the Chief Information Officer	\$1,579,600
Human Resources	62,2626
Finance	85,428
Federal Employees' Compensation Act	49,446
Judgment Fund	7,005
Security	445,185
Telecommunications	196,212
Inspection	52,361
Rent	2,146,320
Training and Development ...	11,556
Shipping	101,264
Total	4,736,639

Additional Charge for Automation

The FBI is authorized by law (Pub. L. 101-515) to charge an additional amount for each name check to defray expenses for automation and associated costs. Under this authority, the additional amount may be placed in a separate account and retained until expended. The proposed amount of the additional charge is currently estimated to be \$1.00 per name check. The additional amount was calculated by dividing the estimated two-year total cost of planned Information Technology (IT) investments by the estimated two-year volume of name check requests. Current estimates total approximately \$7.2 million to be invested in system enhancements during FY 2008 and FY 2009. The tables below provide more detailed information on the planned IT investments. The total is divided by an estimated 2-year volume of 7.15 million name check requests to arrive at an additional amount of \$1.00 per name check.

SUMMARY OF SPENDING FOR PROJECT (INVESTMENT) STAGES

	Fiscal year 2008	Fiscal year 2009	Total
Planning	\$1,200,000	\$0	\$1,200,000
Acquisition	3,000,000	3,000,000	6,000,000
Total	4,200,000	3,000,000	7,200,000

Volumes Used To Calculate the Fee

The unit cost and proposed fees are based on the following projected volumes for FY 2008:

Product/service	Projected volume
Electronic (Batch Process)	3,471,638
File Review/Analysis (Routine)	1,186,891
File Review/Analysis (Expedited)	209,451

These projections were based on analysis of FY 2005 and FY 2006 workload volume, along with expected workload increases for FY 2008. Significant factors that influenced the

projections were continued work on pending cases and expected workload increase from Homeland Security Presidential Directive (HSPD)—12 requirements.

Projected costs and workload were used to calculate the proposed fees provided in the table below. The fees shown below include the additional \$1.00 charge previously discussed. Some NNCP name checks (criminal justice and law enforcement) can not be billed to customers, and the revenue estimates provided below are based on estimated billable volume. The billable volume and revenue estimates are based on the following assumptions:

- Under the new fee structure, 15% of name checks processed after the batch process will be expedited requests. This is based on an analysis of FY 2006 workload data.

- The revenue estimate assumes that 85% of NNCP requests are billable to customers. As provided in the authorizing language, name checks performed for certain purposes are exempt from the fee. The cost of the remaining fee-exempt requests is not recovered through fees charged for billable work but is paid from FBI salary and expense appropriation.

- Unit costs are rounded up to the next \$0.25.

Product/service	Annual billable volume	Fee	Revenue
Electronic (Batch Process)	1,1918,080	\$1.50	\$2,877,120
File Review/Analysis (Routine)	1,008,857	29.50	29,761,282
File Review/Analysis (Expedited)	178,033	56.00	9,969,848
Total			42,608,250

The following table shows the amount that each cost category (labor, non-labor, and overhead/support) contributes to the fee. The cost of batch processing is

not included in the subtotal unit cost for File Review/Analysis; however, batch processing is performed prior to the File Review/Analysis service and is

included in the proposed fee. This table also shows the adjustment made for the expedited fee.

Cost category/adjustment	Electronic (batch process)	File review/analysis (routine)	File review/analysis (expedite)
Labor	\$0.21	\$17.33	\$17.33
Non-Labor	0.04	11.71	11.71
Overhead/Support	0.25	2.98	2.98
Subtotal Unit Cost	0.50	32.02	32.02
Expedite Amount	N/A	(\$4.05)	22.27
Adjusted Unit Cost	0.50	27.97	54.30
Round up to \$0.25	0.00	0.03	0.21
Batch Processing	N/A	0.50	0.50
Additional Charge	1.00	1.00	1.00
Proposed Fee	1.50	29.50	56.00

As noted above, the FBI established this proposed fee schedule on an interim basis, effective October 1, 2007. The following table shows the amounts by which the fees were changed. Fee classes remained essentially the same, with the exception that manual submissions and expedited processing

requests were consolidated into a single class. Under the interim fee schedule, the fee was increased only 10 cents for users submitting electronic requests that are limited to batch processing (from \$1.40 to \$1.50). Such users constituted more than 60 percent of the billable name checks at that time. The fee

increases for name checks involving non-electronic submissions and other special services were more substantial because of the higher cost for processing manual submissions and the cost for expediting responses ahead of routine transactions.

SUMMARY OF FEE CHANGES

Service	Previous fee	Proposed fee	Total fee increase
Electronic Submission			
Batch Process Only	\$1.40	\$1.50	\$0.10
Batch + File Review	10.65	29.50	18.85
Manual Submission	12.00	56.00	44.00
Expedited Submission	22.65	56.00	33.35

The FBI will continue to analyze its costs and will review related fee charges periodically, as recommended by Office of Management and Budget Circular No. A-25, User Charges (OMB Circular A-25). The proposed rule advises that future adjustments to the FBI's fees will be announced by notice in the **Federal Register**.

V. Administrative

Consultations With Interested Federal Agencies

The FBI has provided information about this proposed rule to the largest three customers by volume of submissions, the United States Citizenship and Immigration Services, the Office of Personnel Management, and the Department of State. The FBI will develop standards of performance and timeliness with these three federal customers and provide performance information against the standards. The FBI will develop plans for management action in the event the standards agreed upon are not met, working with customer agencies. As appropriate, the FBI may pursue similar arrangements with its other federal customers.

Effective Date for the New Fees

The proposed rule explains the methodology used to calculate the FBI revised fees, provides a proposed fee schedule, and advises that future fee adjustments will be made by notice published in the **Federal Register**. After public comment, a final rule and notice of the final fee schedule will be published concurrently in the **Federal Register**. This new schedule will be put into effect 60 days following publication of the notice.

Notice of the New Fee Schedule

Any changes to the Fee Schedule will be published in the **Federal Register**.

VI. Regulatory Certifications

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify, in lieu of preparing an analysis, that the proposed rulemaking is not expected to have significant economic impact on a substantial number of small entities.

This proposed rule does not directly or indirectly impact any small entity, as defined by the RFA to include small businesses, small organizations, and

small governmental jurisdictions. The fees for providing name-based checks of the FBI Central Records System are imposed upon the Federal agencies authorized to request these checks, therefore, there is no direct or indirect impact on small entities, as federal agencies do not fall within the definition of a small entity.

Accordingly, the Director of the FBI hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 (Regulatory Planning and Review)

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review section 1(b), Principles of Regulation. The FBI has determined that this rule is a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the OMB.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132 (Federalism)

This proposed rule will not have a substantial direct effect 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. The fees for providing these name-based checks for non-criminal justice purposes are imposed upon the individual subject of the background check or are absorbed by the federal agencies submitting the requests. Therefore, in accordance with Executive Order 13132, it is determined that this rule has no federalism implications and does not warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This proposed rule does not contain a mandate that will result in the expenditure by state, local, and tribal governments (in the aggregate) or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the U.S. economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

Accordingly, for the reasons set forth in the preamble, part 20 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

1. The authority citation for part 20 is revised to read as follows:

Authority: 28 U.S.C. 534; Public Law 92-544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*, Public Law 99-169, 99 Stat. 1002, 1008-1011, as amended by Public Law 99-569, 100 Stat. 3190, 3196; Public Law 101-515, as amended by Public Law 104-99, set out in the notes to 28 U.S.C. 534.

2. Section 20.3 is amended by adding paragraphs (t) and (u) to read as follows:

§ 20.3 Definitions.

* * * * *

(t) *Central Records System* or CRS encompasses all centralized records of FBI Headquarters, field offices and Legal Attache offices. See the CRS Privacy Act System Notice periodically published in the **Federal Register** for further details.

(u) *National Name Check Program* or NCP is responsible for disseminating information from the FBI CRS in response to requests submitted by federal agencies.

3. Section 20.30 is revised to read as follows:

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to the III System, the FIRS, and the CRS, and to duly authorized local, state, tribal, federal, foreign, and international criminal justice agencies to the extent that they utilize the services of the III System, the FIRS or the CRS. This subpart is applicable to both manual and automated criminal history records.

4. Section 20.31 is amended by adding paragraphs (e) and (f) to read as follows:

§ 20.31 Responsibilities.

* * * * *

(e) The FBI may routinely establish and collect fees for non-criminal justice identification services as authorized by federal law. These fees apply to federal, state and any other authorized entities requesting name checks for non-criminal justice purposes.

(1) The Director of the FBI shall review the amount of the fee periodically, but not less than every four years, to determine the current cost of processing name checks for non-criminal justice purposes.

(2) Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other federal law as applicable.

(3) Fee amounts and any revisions thereto shall be published as a notice in the **Federal Register**.

(f) The FBI will collect a fee for providing non-criminal name-based background checks of the FBI Central Records System through the National Name Check Program pursuant to the authority in Public Law 101-515 and in accordance with paragraphs (e)(1), (2) and (3) of this section.

Dated: September 18, 2008.

Robert S. Mueller, III,

Director, Federal Bureau of Investigation.

[FR Doc. E8-22710 Filed 9-25-08; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 66

RIN 1219-AB41

Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearing; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing on its proposed rule to amend the existing metal and nonmetal standards for the possession and use of intoxicating beverages and narcotics and make the new standard applicable to all mines. The proposed rule would also require those who violate the prohibitions to be removed from the performance of safety-sensitive job duties until they successfully complete the recommended treatment and their alcohol- and drug-free status is confirmed by a return-to-duty test.

DATES: All comments must be received by midnight Eastern Daylight Savings Time on October 29, 2008.

MSHA will hold a public hearing on October 14, 2008. The **SUPPLEMENTARY INFORMATION** section of this notice includes details of the hearing.

ADDRESSES: Comments must be clearly identified with "RIN 1219-AB41" and may be sent by any of the following methods:

(1) *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) *Electronic mail:* zzMSHA-comments@dol.gov. Include "RIN 1219-AB41" in the subject line of the message.

(3) *Facsimile:* 202-693-9441. Include "RIN 1219-AB41" in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Comments can be accessed electronically at <http://www.msha.gov> under the Rules and Regs link. MSHA will post all comments on the Internet without change, including any personal information provided.

Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard,

Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey,
patricia.silvey@dol.gov (E-mail), 202-693-9440 (Voice).

SUPPLEMENTARY INFORMATION:

I. Background

On September 8, 2008 (73 FR 52136), MSHA published a proposed rule in the **Federal Register** that would amend the existing metal and nonmetal standards concerning the use of intoxicating beverages and narcotics and would make the new standard applicable to all mines. The proposed rule would designate the substances that cannot be possessed on mine property or used while performing safety-sensitive job duties, except when used according to a valid prescription. Mine operators would be required to establish an alcohol- and drug-free mine program, which includes a written policy, employee education, supervisory training, alcohol- and drug-testing for miners that perform safety-sensitive job duties and their supervisors, and referrals for assistance for miners and supervisors who violate the policy. The proposed rule would also require those who violate the prohibitions to be removed from the performance of safety-sensitive job duties until they successfully complete the recommended treatment and their alcohol- and drug-free status is confirmed by a return-to-duty test.

II. Public Hearing

MSHA will hold a public hearing on the proposed rule. The public hearing will begin at 9 a.m. Eastern Daylight Savings Time (EDST). The public hearing will be held via Web cast at three locations. The hearing will end at 5 p.m. EDST, or after the last speaker speaks. The hearing will be held on the following date at the locations and times indicated:

Date	Location	Contact information
October 14, 2008	<i>Via Webcast:</i> 9 a.m. Eastern Daylight Savings Time Cisco Washington DC, 1300 Pennsylvania Avenue, NW., Suite 250, Washington, DC 20004, POC: Mic Keith 202-354-2904 (main bldg phone).	Office of Standards, Regulations and Variances 202-693-9440.
October 14, 2008	<i>Via Webcast:</i> 9 a.m. Eastern Daylight Savings Time Cisco Washington DC, 1300 Pennsylvania Avenue, NW., Suite 250, Washington, DC 20004, POC: Mic Keith 202-354-2904 (main bldg phone).	Office of Standards, Regulations and Variances 202-693-9440.