human health were evaluated with the assistance of the EPA Office of Research and Development and the Superfund Health Risk Technical Support Center. Uncertainties related to non-cancer effects pertaining to the risks posed by the semivolatile organic contaminants identified in surface and subsurface soil were reduced, though not entirely eliminated. The evaluation concluded that an overwhelming majority of the compounds analyzed were not detected. Those SVOCs that were present in surface and subsurface soil were found below preliminary remediation goals and a hazard index of 1.0. In addition, two rounds of groundwater sampling conducted during 2007 showed that the tentatively and unidentified semivolatile organic compounds are not present in the Site's groundwater.

Selected Remedy

EPA, in consultation with FDEP, selected a No Action Record of Decision (ROD) at the CSDS Site on September 12, 2007. As discussed above, this decision was based principally on the outcome of both human health and ecological risk assessments. The estimates of human risks under the various exposure scenarios found that cancer and non-cancer risks posed by the Site's media were well within the ranges found acceptable by EPA.

Five-Year Review

Although hazardous substances are not known to be present onsite above levels allowing for unlimited use and unrestricted exposure, a discretionary five year review will be conducted by EPA within five years of the signing of the 2007 ROD. The purpose of this review is to revisit the issue related to the presence of tentatively identified and unidentified semivolatile organic compounds believed to be present in the Site's soil.

Community Involvement

Community relations involvement efforts for the CSDS Site began in August 2000 when the Florida Department of Health, Agency for Toxic Substances and Disease Registry and EPA publicized and held a public availability session, for the purpose of communicating the results of the health consultation and to inform the community of the Site's status. In mid-2002, EPA finalized the Site's Community Involvement Plan. Area residents were contacted as part of the community involvement work. An information repository was established at the Lake Alfred Public Library. Documents supporting both the removal action and the 2007 ROD were made available to the public at the Site's information repository, prior to the issuance of this ROD. On July 6, 2007, EPA published a Notice of Proposed Plan Public Comment Period and offered a public meeting. Only one comment was received during the comment period. No requests for a Public Meeting or extension of the comment period were received. Information which EPA has relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion in the NCP

All of the completion requirements for this Site have been met, as described in the December 2007 Final Close-Out Report. The State of Florida has concurred with the proposed deletion of this Site from the NPL.

The NCP specifies that EPA may delete a site from the NPL if, ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA with the concurrence of the State of Florida, through the FDEP, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

V. Deletion Action

EPA, with concurrence of the State of Florida through the FDEP, has determined that all appropriate response actions under CERCLA, other than five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 4, 2009 unless EPA receives adverse comments by July 6, 2009. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 19, 2009.

J. Scott Gordon,

Acting Regional Administrator, EPA Region 4.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''Callaway & Son Drum Service'', ''Lake Alfred, Florida.''

[FR Doc. E9–13165 Filed 6–4–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 400

[Docket No. NHTSA–2008–0142]

RIN 2127–AK37

E–911 Grant Program

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT); National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: This joint Final Rule implements the E–911 grant program authorized under the Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004 (Pub. L. 108–494, codified at 47 U.S.C. 942). The Act authorizes grants for the implementation and operation of Phase II enhanced 911 services and for migration to an IP-enabled emergency network. To qualify for a grant, an applicant must submit a State 911 plan and project budget, designate an E–911 coordinator, and certify, among other things, that the State and other taxing

jurisdictions within the State have not diverted E–911 charges for any other purpose within 180 days preceding the application date. This Final Rule establishes the requirements an applicant must meet and the procedures it must follow to receive an E–911 grant.

DATES: This Final Rule becomes effective on June 5, 2009.

FOR FURTHER INFORMATION CONTACT: *For program issues:* Mr. Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590. Telephone: (202) 366–9966. E-mail: *Drew.Dawson@dot.gov.*

For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NCC–113, Washington, DC 20590. Telephone: (202) 366–1834. E-mail: *Jin.Kim@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Trends in telecommunications mobility and convergence have put the nation's 911 system at a crossroads. The growing market penetration of both wireless telephones (commonly known as mobile or cell phones) and Voice over Internet Protocol (VoIP) telephony have underscored the limitations of the current 911 infrastructure. The 911 system, based on decades-old technology, cannot handle the text, data, image and video that are increasingly common in personal communications and critical to emergency response.

Many of the limitations of the current 911 system stem from its foundation on 1970s circuit-switched network technology. Each introduction of a new access technology (*e.g.,* wireless) or expansion of system functions (*e.g.,* location determination) requires significant engineering and system modifications. There appears to be consensus within the 911 community on the shortcomings of the present 911 system and the need for a new, more capable system, based upon a digital, Internet-Protocol (IP) based infrastructure.

Today, there are approximately 255 million wireless telephones in use in the United States. About 80 percent of Americans now subscribe to wireless telephone service and 14 percent of American adults live in households with only wireless telephones, i.e., no landline telephones. Of the estimated 240 million 911 calls made each year, approximately one-third originate from wireless telephones. In many communities, at least half of the 911 calls come from wireless telephones. Unlike landline 911 calls, not all wireless 911 calls are delivered to dispatchers with Automatic Number Information (ANI) and Automatic Location Information (ALI), two pieces of information that aid in identifying the telephone number and geographic location of the caller. The increasing use of VoIP communications has compounded this problem because the location of the caller cannot automatically be determined when a 911 call is made on some interconnected VoIP services. Without this information, emergency response times may be delayed. Prompt and accurate location information is critical to delivering emergency assistance. Ensuring enhanced 911 (E–911) service for each caller, i.e., telephone number and location information of the caller, is increasingly important to public safety, given the vast number of 911 calls originating from wireless and VoIP telephones.

Successful E–911 service implementation requires the cooperation of multiple distinct entities: Wireless carriers, wireline telephone companies (also known as local exchange carriers), VoIP providers, and Public Safety Answering Points (PSAPs). A PSAP is a facility that has been designated to receive emergency calls and route them to emergency personnel. For example, when a 911 call is made from a wireless telephone, the wireless carrier must be able to determine the location of the caller, the local exchange carrier must transmit that location information from the wireless carrier to the PSAP, and the PSAP must be capable of receiving such information.

Currently, many PSAPs are not technologically capable of receiving ANI and ALI from wireless 911 calls. In order to receive this information, PSAPs must upgrade their operations centers and make appropriate trunking arrangements (i.e., establish a wired connection between the PSAP and the networks of the local wireline telephone companies) to enable wireless E–911 data to pass from the wireless carrier to the PSAP. Once a PSAP is technologically capable of receiving this information, the PSAP can submit requests to wireless carriers for E–911 service. Under Federal Communications Commission (FCC) regulations, this request triggers a wireless carrier's obligation to deploy E–911 service to a PSAP.

Upgrading the 911 system to an IP-enabled emergency network will enable E–911 calls from more networked communication devices, enable the transmission of text messages, photographs, data sets and video, enable geographically independent call access, transfer, and backup among and between PSAPs and other authorized emergency organizations, and support an ''interoperable internetwork'' of all emergency organizations.

Many PSAPs do not have the resources to make the upgrades necessary to request E–911 service. Some PSAPs are able to fund upgrades from their existing budgets, but other PSAPs must rely on funds collected by the State to maintain operation and make capital improvements to 911 services. While most States collect some type of wireless fee or surcharge on consumers' wireless telephone bills to help fund PSAP operations and upgrades, not all State laws ensure that such surcharges are dedicated to their intended use. In fact, some States have used E–911 surcharges to satisfy other State obligations that may be marginally related to public safety, even though PSAPs remain unable to receive E–911 service. *See, e.g.,* Government Accountability Office (GAO), States' Collection and Use of Funds for Wireless Enhanced 911 Services, GAO–

06–338 (March 2006); see also GAO, Survey on State Wireless E911 Funds, GAO–06–400sp (2006).

Recognizing the need for dedicated funding of E–911 services, the Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004 (Pub. L. 108–494, codified at 47 U.S.C. 942) was enacted ''to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E–911 calls, and to support the construction and operation of a ubiquitous and reliable citizen activated system[.]'' This grant program was established to provide $43.5 million (less administrative costs) for the implementation and operation of Phase II E–911 services and for migration to an IP-enabled emergency network. 47 U.S.C. 942(b)(1).

II. Statutory Requirements

The ENHANCE 911 Act directs NHTSA and NTIA to issue joint implementing regulations prescribing the criteria for selection for grants. 47 U.S.C. 942(b)(4). The Act establishes certain minimum requirements for grant applications. An applicant must provide at least 50 percent of the cost of a project from non-Federal sources. 47 U.S.C. 942(b)(2). In addition, an applicant must certify that it has coordinated its application with the public safety answering points located within the jurisdiction; that the State has designated a single officer or governmental body to serve as the coordinator of implementation of E–911 services; that it has established a plan for the coordination and implementation of E–911 services; and that it has integrated telecommunications services involved in the implementation and delivery of Phase II E–911 services. 47 U.S.C. 942(b)(3).

The Act also requires applicants to certify that no portion of any designated E–911 charges imposed by the State or other taxing jurisdiction within the State is being or will be obligated or expended for any purpose other than E–911 purposes during the period at least 180 days immediately preceding the date of the application and continuing throughout the time grant funds are available to the applicant. 47 U.S.C. 942(c)(2). Applicants must agree to return any grant awarded if the State or other taxing jurisdiction diverts designated E–911 charges during the time period that grant funds are available. 47 U.S.C. 942(c)(3). Finally, applicants that knowingly provide false information on the certification are not eligible to receive grant funds and must return any grant funds awarded. 47 U.S.C. 942(c)(4).

III. Notice of Proposed Rulemaking

The agencies published a notice of proposed rulemaking (NPRM) to prescribe the criteria for grants under the E–911 grant program. See E–911 Grant Program, 73 FR 57567 (Oct. 3, 2008). The NPRM outlined the application and administrative requirements that States must meet to receive grant awards. In addition, the NPRM identified the minimum grant amount for each State qualifying for a grant award.

The NPRM proposed to permit only the 50 United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands to apply for grant funds on behalf of all eligible entities located within their borders. The NPRM also outlined the application requirements for States to apply for a grant under this program. Specifically, the NPRM identified the following components as the application requirements: A State 911 plan, a project budget, a supplemental project budget (if applicable), designation of an E–911 Coordinator, and certification of compliance with statutory and programmatic requirements.

The NPRM provided that the State 911 Plan must describe the projects and activities proposed to be funded with E–911 grant funds as well as establish performance metrics and timelines for grant project implementation, subject to E–911 Implementation Coordination Office (ICO) review and the agencies' approval. The NPRM also provided that the State 911 Plan must certify (1) coordination with local governments, tribal organizations, and PSAPs within the State's jurisdiction; (2) priority given to communities without 911 capability or an explanation of why priority would not be practicable; (3) involvement of integrated telecommunications service providers in the implementation and delivery of Phase II E–911 services or for migration to an IP-enabled emergency network; and (4) use of technologies to achieve compliance with Phase II E–911 services or for migration to an IP-enabled emergency network. In addition, the NPRM provided that States must demonstrate in the State 911 Plan that at least 90 percent of the grant funds would be used for the direct benefit of PSAPs. Finally, the NPRM specified that, in the State 911 Plan, the State must detail how it intended to employ technology to achieve compliance with the FCC description of Phase II E–911 services and/or how it intended to migrate to an IP-enabled emergency network.

The agencies proposed that States submit a project budget for the projects or activities proposed to be funded by the grant funds, including the identification of non-Federal sources that would fund 50 percent of the cost, if applicable. See 48 U.S.C. 1469a(d) (waiver for non-Federal matching funds under $200,000, including in-kind contributions, for the Territorial governments in American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands). The agencies specified that the project budget must account for the initial distribution of grant funds, as identified for each State in an appendix to the NPRM. The initial distribution of grant funds to each State, if all States applied and qualified for a grant, was based on the agencies' proposed formula, as follows: 50 percent in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 50 percent in the ratio which the public road mileage in each State bears to the total public road mileage in all States, as shown by the latest available Federal Highway Administration data. However, each State would receive a minimum award of $500,000, except that the four territories—American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands—would each receive a minimum of $250,000.

In anticipation of some States not applying or qualifying for grant funds, the agencies proposed distributing unallocated funds to the pool of qualifying States in accordance with the same formula used for the initial distribution. In order to obligate any initially unallocated balances before the end of fiscal year 2009, the NPRM proposed that States interested in additional grant funds include a supplemental project budget identifying proposed projects or activities with their application. The supplemental project budget would identify the maximum amount that the State was able to match from non-Federal sources and include details of the proposed projects or activities to be funded.

The NPRM identified the eligible uses for the E–911 grant funds—implementation and operation of Phase II E–911 services or migration to an IP-enabled emergency network. Specifically, the agencies proposed that grant funds and matching funds be used

either for the acquisition and deployment of hardware and software that enables compliance with Phase II E–911 services or that enables migration to an IP-enabled emergency network, or for training in the use of such hardware and software.

The NPRM also proposed that, as part of the application, the State identify a single officer or governmental body designated by the Governor to serve as the coordinator of implementation of E–911 services and the certifying official on the certifications. The agencies proposed that the E–911 Coordinator would be responsible for certifying that the State coordinated its application with local governments, tribal organizations and PSAPs; established a plan for the coordination and implementation of E–911 services; would ensure that at least 90 percent of the grant funds were used for the direct benefit of PSAPs; had integrated telecommunications services involved in the implementation and delivery of Phase II E–911 services; and would provide at least 50 percent of the cost of each project funded under this grant from non-Federal sources (if applicable).

The proposal also provided that the E–911 Coordinator must certify that no designated E–911 charges imposed by the State or taxing jurisdiction within the State would be diverted for other purposes from the time period 180 days preceding the date of the application and continuing throughout the time period during which grant funds were available. The proposal further required States to agree to return all grant funds if any designated E–911 charges imposed by the State or any taxing jurisdiction within the State were diverted to other uses.

Finally, the NPRM identified the financial and administrative requirements for the grant program.

IV. Comments

The agencies received submissions from 13 commenters in response to the NPRM. Commenters included the following seven State agencies: the California 9–1–1 Emergency Communications Office (CA 911 Office); the State of Missouri 9–1–1 Coordinator (MO 911 Coordinator); the Nebraska Public Service Commission (NE PSC); the Pennsylvania Emergency Management Agency, Bureau of 911 Programs (PA EMA); the Georgia Emergency Management Agency (GA EMA); the Texas Commission on State Emergency Communications (TX CSEC); and the Washington State Enhanced 911 Program (WA E911 Office). Additional commenters included four associations and consortiums: CSI–911 (CSI–911); the National Emergency Number Association/National Association of State 911 Administrators (NENA/NASNA); the Alaska Chapter of the National Emergency Number Association (AK NENA); and the Colorado Public Utilities Commission 9–1–1 Task Force (CO 911). Two interested members of the public also provided comments.

A. In General

Some commenters sought clarification of specific aspects of the NPRM, while others requested amendments to the application requirements. The agencies received comments from NENA/NASNA and the CA 911 Office in support of the formula-based approach for distributing grant funds. The AK NENA requested additional grant distributions for States still deploying basic 911 services or lacking Statewide E–911. Several commenters requested clarification of the eligible uses of grant funds. The agencies address these comments below under the appropriate heading.

The agencies received a few comments concerning the sections on non-compliance (§ 400.8), financial and administrative requirements (§ 400.9), and close-out (§ 400.10), which were generally supportive. *See, e.g.,* WA E911 at 4; CA 911 Office at 5–6. Consequently, the Final Rule leaves these provisions unchanged. The agencies received one supportive comment concerning the proposed approval and award procedures (§ 400.5). CA 911 Office at 5. The agencies have added clarifying language in § 400.5 to highlight the importance of the State's response to the ICO's request for additional information. In the NPRM, the agencies stated that the ICO, upon review of a State's application, may request additional information from the State prior to making a recommendation of award in order to clarify compliance with the statutory and programmatic requirements. In the Final Rule, the agencies have added the following language: ''Failure to submit such additional information may preclude the State from further consideration for award.'' The agencies believe that this was implicit in the proposal, but add language to clarify this point.

B. Definition of IP-Enabled Emergency Network

The NENA/NASNA thought that the definition of ''IP-enabled emergency network'' was ''overly narrow,'' and requested that it be expanded to cover the ''larger NG9–1–1 system.'' See NENA/NASNA at 3–4. The NENA/NASNA described the system as including ''the software, applications, interfaces and databases that traverse, connect and enable effective routing over a network.'' According to the NENA/NASNA, only a ''system,'' of which a ''network'' is a key component, would enable ''the receipt and response to all citizen-activated emergency communications and improve information sharing among all emergency response entities'' as intended by the Act. The agencies did not intend to define IP-enabled emergency network narrowly, and thus, adopted most of the language suggested by NENA/NASNA. Accordingly, the definition of ''IP-enabled emergency network'' or ''IP-enabled emergency system'' in § 400.2 of the Final Rule now reads as follows: ''an emergency communications network or system based on a secured infrastructure that allows secured transmission of information, using Internet Protocol, among users of the network or system.''

C. States Applying on Behalf of All Eligible Entities

NENA/NASNA and the CA 911 Office generally supported the proposal to limit E–911 grant applications to States, on behalf of all eligible entities within the jurisdiction. The CA 911 Office, however, asked whether States must account for distribution of grant funds to each eligible entity in the State, warning that such a requirement would result in an ''administrative nightmare.'' See CA 911 Office at 1. The CA 911 Office suggested that States be allowed ''to apply for grant funds in a manner that demonstrates benefit to all eligible entities located within their borders.'' As explained in more detail in Section IV.D.2, the rule does not require grant funds to be distributed to every eligible entity within the State, so long as the ''direct benefit of PSAPs'' requirement is met. A State may distribute grant funds directly to one or more PSAPs or expend the funds in a manner that satisfies the requirement to benefit eligible entities within the State (as the CA 911 Office proposes), or it may follow a combination of these two approaches. Whatever approach is adopted, the State, as grant recipient, is responsible for accounting for the distribution and expenditure of all grant funds received under this program, in accordance with standard grant administration procedures.

One anonymous individual recommended that NHTSA collect all applications and review and award the funds to ensure that ''all of the money will be awarded directly to the individual agencies that need it as opposed to bleeding off the dollars to

admin/handling fees at the state level.'' The commenter states that this would ensure that ''national needs are met as opposed to what a State believes [are] important.'' While the agencies understand the commenter's concerns, the agencies continue to believe that limiting the applicant pool to States is necessary to streamline the grant process so that timely award is assured before the end of the program in fiscal year 2009. As discussed later, the agencies believe that the requirement for States to certify that 90 percent of the grant funds will be used for the direct benefit of PSAPs strikes the proper balance between State concerns and the overarching goals of the ENHANCE 911 Act to address the interests of PSAPs. The agencies have made no change to the rule in response to this comment.

D. Application: State 911 Plan

The CA 911 Office recommended that the following two additional planning elements be added to ensure project documentation that reflects quality control and basic project management principles: ''provide success parameters for the plan and identify any risks'' and ''include a deliverable to provide final documentation that shall include, as a minimum, the design, testing, monitoring and lessons learned for use by other public safety authorities in the country by means of public record requests.'' CA 911 Office at 3. The NPRM proposed that States provide a plan that details the projects and activities proposed to be funded for the implementation and operation of Phase II E–911 services or migration to an IP-enabled emergency network, establishes metrics and a time table for grant implementation, and describes the steps the State has taken to meet statutory and programmatic elements of the grant program. See § 400.4(a)(1). In addition, the NPRM proposed that States submit annual performance reports and quarterly financial reports. See § 400.9(b). The agencies believe that these requirements sufficiently address the need for project documentation that reflects quality control and basic project management principles. Consequently, the agencies have not adopted the suggestion for additional planning elements.

The PA EMA stated that the State 911 Plan should be more consistent with the requirements of the Model State 911 Plan (''Model Plan''). PA EMA at 2. The Model Plan, which was developed by NASNA as part of a cooperative agreement with NHTSA, is intended to be a comprehensive, long-term plan to coordinate the planning and implementation of E–911 services. In light of the relatively limited funding available under this grant program, the agencies do not expect States to develop this kind of comprehensive, long-term plan in order to apply for a grant. Therefore, the agencies decline to adopt the PA EMA's recommendation.

The agencies received no comments on two components of the State 911 Plan—priority to communities without 911 capability and employing the use of technologies. Consequently, the rule remains unchanged with regard to these components of the State 911 Plan.

1. Coordination

The MO 911 Coordinator commented that Missouri does not have any statutory provisions that allow coordination with PSAPs, and suggested removing the word ''statutory'' from the requirements. MO 911 Coordinator at 3. The preamble to the NPRM merely explained that the basis for the coordination requirement in the State 911 Plan was a statutory provision in the ENHANCE 911 Act. The proposal did not impose a requirement for a State to have statutory provisions concerning coordination. Moreover, the agencies do not agree with what Missouri appears to be implying—that such coordination cannot take place in the absence of a State statutory provision authorizing it. In any event, the ENHANCE 911 Act specifically requires such coordination. Consequently, States must coordinate their application with PSAPs in order to qualify for a grant award. The agencies make no change to the rule in response to this comment.

The GA EMA asked whether a 911 advisory committee appointed by the Governor, with PSAP directors' representation, would satisfy the coordination requirement, and the WA E911 Office suggested that States be able to meet the requirement to coordinate with PSAPs if the State coordinates with all governmental agencies representing or managing PSAPs within the State. GA EMA at 1; WA E911 Office at 5. Because States are applying on behalf of all eligible entities within their borders, the coordination requirement is intended to ensure that the needs of PSAPs are addressed in State 911 Plans. A 911 advisory committee would satisfy the coordination requirement, provided it included representation of PSAPs among its membership. Similarly, State coordination with all governmental agencies that represent or manage the PSAPs in the State would satisfy this coordination requirement. No change to the rule is necessary.

The PA EMA and WA E911 Office questioned the proposed requirement to coordinate the application with tribal organizations located within the State. See PA EMA at 2; WA E911 Office at 5. Both commenters asserted that the agencies were extending the coordination requirements beyond the proper reach of the ENHANCE 911 Act. NENA/NASNA suggested that ''the agencies may wish to consider how [tribal organizations], many of whom greatly need funding assistance, can be eligible for grant funds despite their separate governing structure that is fully severable from the state government.'' NENA/NASNA at 2, n. 6. The agencies disagree with these commenters. The ENHANCE 911 Act, as amended, directs the agencies to make grants to ''eligible entities,'' which specifically include tribal organizations. Short of expanding the applicant pool to include the many existing tribal organizations, which is administratively impracticable for reasons explained in the preamble to the NPRM, the coordination requirement is necessary.

The WA E911 Office expressed concern that the State might not have authority to coordinate with tribal organizations. WA E911 Office at 5. States need not have specific statutory authority to coordinate E–911 related services with tribal organizations. Most States have existing relationships with tribal organizations that would readily facilitate the coordination necessary to meet the objectives of the E–911 grant program. Consequently, the agencies have made no changes to the rule.

2. Direct Benefit of PSAPs

The agencies received comments from NENA/NASNA, CA 911 Office, GA EMA, WA E911 Office, and PA EMA requesting clarification of the meaning of ''direct benefit of PSAPs.'' The CA 911 Office, WA E911 Office and PA EMA asked whether Statewide activities or projects that benefited PSAPs would satisfy the ''direct benefit of PSAPs'' requirement or whether the term's meaning was limited to direct distribution to PSAPs. See CA 911 Office at 1–2; WA E911 Office at 5–6; PA EMA at 2. This proposed requirement is not intended to encourage the continuation of the traditional model of investment at the individual PSAP level, as the WA E911 Office suggested. Rather, the agencies intend the phrase ''direct benefit of PSAPs'' to cover both direct distribution to PSAPs at the individual PSAP level and Statewide projects in which multiple PSAPs would benefit from the investment of E–911 grant funds, as articulated by NENA/NASNA. NENA/NASNA at 4. In either case, the State must ensure that 90 percent of the grant funds are being used for the actual

implementation and operation of E–911 services or for migration to an IP-enabled emergency network. Because E–911 capabilities vary from State to State, the agencies believe that States, in coordination with the eligible entities within their borders, are best positioned to select between direct distribution to PSAPs and Statewide projects benefiting multiple PSAPs (or a combination of both approaches) to upgrade their E–911 capabilities. As noted by NENA/NASNA, some States with many PSAPs not capable of receiving Phase II E–911 information may choose to prioritize their grant funds to upgrade these PSAPs while other States may use their grant funds for Statewide projects that would benefit all PSAPs, such as establishing or enabling access to an emergency services IP network. NENA/NASNA at 5. The agencies believe that the existing language accommodates both approaches, and that no change to the Final Rule is necessary.

The MO 911 Coordinator requested clarification as to the use of the remaining 10 percent of the grant funds, after the 90 percent used for the direct benefit of PSAPs. MO 911 Coordinator at 2. The agencies intend that up to 10 percent of the grant funds be available to the State to manage the projects and activities approved under the E–911 grant program. To clarify this point, the agencies have added language in § 400.4(a)(1)(ii) stating that not more than 10 percent of the grant funds may be used for the State's administrative expenses.

The TX CSEC requested that the following language be added to the State's certification that 90 percent of the grant funds will be used for the direct benefit of PSAPs: ''[t]his requirement is presumed to have been met provided that all PSAPs in the State, through their respective 9–1–1 Governing Authorities as defined in NENA Master Glossary of 9–1–1 Terminology, have been involved in the development of the State 911 Plan. For purposes of this requirement, the term ''direct-benefit'' shall be liberally construed.'' TX CSEC at 2. As discussed above, the agencies intended the language ''direct benefit of PSAPs'' to require States to target the grant funds to meet the specific needs of PSAPs. The agencies did so to give proper weight to the broad eligibility criteria in the ENHANCE 911 Act. The agencies do not agree with the TX CSEC that the goal of directly benefiting PSAPs would be achieved merely by virtue of PSAP participation in the development of the State 911 plan, and the agencies decline to adopt the comment.

3. Involvement of Integrated Telecommunications Services

The agencies received two comments regarding the involvement of integrated telecommunications services. The PA EMA requested that a definition of this term be added to the rule, and the GA EMA asked how a State must involve integrated telecommunications services in the implementation and delivery of Phase II E–911 services. PA EMA at 1; GA EMA at 1. The Act requires applicants to certify that they have integrated telecommunications services involved in the implementation and delivery of E–911 services, but did not provide a definition for the term ''integrated telecommunications services.'' In response to these comments, the agencies have added a definition in § 400.2. The term ''integrated telecommunications services,'' also referred to as ''integrated telecommunications,'' as now defined in the Final Rule refers to ''those entities engaged in the provision of multiple services, such as voice, data, image, graphics, and video services, which make common use of all or part of the same transmission facilities, switches, signaling, or control devices.'' Integrated telecommunications services play a vital role in enabling PSAPs to upgrade their capability to receive E–911 services. To effectuate the statutory requirement, States should consult with integrated telecommunications services in the planning phase of implementing E–911 services.

E. Application: Project Budget and Supplemental Project Budget

The CA 911 Office described its understanding of the supplemental project budget as follows: ''[t]his is a proposed contingency plan in the event a state did not qualify for an E–911 Grant because they could not meet the certification, but they may be able to qualify for use of any remaining Grant funds.'' CA 911 Office at 3. That is a misunderstanding of the purpose of the supplemental project budget. A State that does not qualify for the initial distribution because it cannot make the required certifications will not be eligible for any E–911 grant funds. In the event funds remain because some States do not apply or fail to qualify, only a State that qualifies for an initial distribution will be eligible for a supplemental distribution. However, the State must submit a supplemental project budget as well as a project budget as part of its application in order to be eligible for the supplemental distribution. The agencies have added language in § 400.4(a)(3) to clarify this point.

F. Application: Match Requirement

The agencies received a number of comments regarding the 50 percent match requirement. The MO 911 Coordinator and the PA EMA asked whether the match requirement could be met with local as well as State funds. MO 911 Coordinator at 3; PA EMA at 3. The proposal specified only that matching funds must come from non-Federal sources meeting the requirements of 49 CFR 18.24 (the Department of Transportation's codification of the Common Grant Rule)—it did not restrict the match only to State funds. States may use both State and local funds to provide the match as long as these funds meet the requirements of 49 CFR 18.24. The agencies determined that no change to the rule is necessary.

The MO 911 Coordinator asked for guidance on what is considered a non-Federal source, and the GA EMA asked if funds from a State grant program funded with 911 fees could be used to meet the match requirement. *See* MO 911 Coordinator at 3; GA EMA at 1. The MO 911 Coordinator also asked whether the match requires a separate budget line item of funds specifically set aside for the grant match or whether existing operating budgets could be used to match. MO 911 Coordinator at 3–4. The agencies do not require a specific line item set aside for the grant match. The agencies refer both commenters to 49 CFR 18.24 for guidance on what is allowable to meet the match requirement. The TX CSEC requested that ''consistent with 49 CFR 18.24,'' be added to the certification regarding the matching funds. TX CSEC at 4. The agencies agree with this comment, and have added that similar language to the certification.

The NE PSC asked that States be allowed flexibility to match funds based on the overall cost of implementation rather than for specific projects. *See* NE PSC at 4. The NE PSC explained that NE's wireless fund could not be used for expenses that were not directly related to wireless service, such as rural addressing. As explained in Section IV.J., rural addressing, purchase of street signs and development of MSAG are not eligible uses for E–911 grant funds. For this reason, costs associated with rural addressing would not meet the match requirement for the E–911 grant funds. Although the agencies are aware that local counties need funds for rural addressing, it is not clear from NE PSC's comments how matching based on the overall cost of full implementation of E–

911 service rather than on a project basis would help local counties receive the financial assistance needed for those expenses that could not be funded by wireless surcharges.

The PA EMA asked whether the State could meet the matching requirement ''by leveraging funds already encumbered for wireless Phase II E9–1–1 or NG9–1–1 studies and/or planning.'' PA EMA at 3. According to the PA EMA, it would be difficult to find new funds to meet the match requirement because the timeline of the application does not line up with State or local budget cycles. While the agencies recognize the potential difficulties described by these commenters, the Act requires applicants to meet the match on ''a project'' basis. *See* 47 U.S.C. 942(b)(2). To allow States to match based on overall cost of implementation would be contrary to the statutory intent. The Act also requires applicants to have an already established plan for the coordination and implementation of E–911 services in order to apply for the grant program. *See* 47 U.S.C. 942(b)(4)(A)(iii). As explained in Section IV.J., grant funds may not be used to develop a plan for the implementation of E–911 services. The agencies believe that allowing the use of leveraged funds intended for developing a plan for matching purposes also would be contrary to the statutory intent. The agencies decline to amend the rule in response to these comments.

G. Application: Designation of E–911 Coordinator

The agencies received numerous comments regarding the proposed requirement that the Governor of the State designate an E–911 Coordinator to implement E–911 services and to sign the certifications. The CO 911 expressed concern that requiring a Governor-appointed E–911 Coordinator would disqualify States without a Statewide coordinator. CO 911 at 2. Three commenters asserted that some States by law or rule already have designated an E–911 Coordinator or an equivalent entity with the authority to manage or coordinate emergency communications, and that requiring the Governor to make another designation in such cases was not necessary and might have a negative impact on established State 911 programs. NENA/NASNA at 5; TX CSEC at 1–2; WA E911 Office at 6. In contrast, the AK NENA requested that the Governor be allowed to designate an entity other than the statutory 911 coordinator to apply on behalf of the State. AK NENA at 3.

In enacting the ENHANCE 911 Act, Congress stated that one of the purposes of the grant program was ''to coordinate 911 services and E–911 services, at the Federal, State, and local levels.'' Section 103, Public Law 108–494. Coordination of 911 services is traditionally managed by the executive branch of the State government. The agencies believe that the Governor of the State is best positioned to identify which agency or office is able to serve as the designated E–911 Coordinator. In light of the express statutory requirement that applicants must certify that the State has a designated E–911 Coordinator (47 U.S.C. 942(b)(4)(A)(ii) and (b)(4)(B)), the rule continues to require States to designate E–911 Coordinators. The agencies recognize that the ENHANCE 911 Act does not require the coordinator to have direct legal authority to implement E–911 services or manage emergency communications operations in order to meet the requirements of the proposal. *See* 47 U.S.C. 942(b)(4)(A)(ii). Because the rule does not require the E–911 Coordinator to have such direct legal authority, the agencies do not believe that adding language to that effect is necessary, as suggested by the TX CSEC. TX CSEC at 2.

The agencies did not intend to circumvent existing State authorities for 911 services in proposing that the Governor designate an E–911 Coordinator. In many States, the State 911 offices are the point of contact for E–911 services. The agencies believe that State 911 offices are well equipped to coordinate the implementation and operation of Phase II E–911 services and the migration to an IP-enabled emergency network. Accordingly, the agencies have made changes in the Final Rule to accommodate the commenters' concerns. If the State has established by law or regulation an office or coordinator with the authority to manage E–911 services, that office or coordinator must be identified as the designated E–911 Coordinator. However, if the State does not have such an office or coordinator established by law or regulation, the Governor must designate a single officer or governmental body to serve as the E–911 Coordinator. The agencies believe that giving States these two options for designating an E–911 Coordinator is the most reasonable and efficient approach to address these concerns. The agencies have made changes to the rule and corresponding changes to the certifications in Appendix B and Appendix C in response to these comments.

The AK NENA claims that Alaska's 911 Coordinator would be ''unable to develop a capable ENHANCE 911 Grant application within the currently stated timelines,'' and asks that the Governor be allowed to designate another coordinator. AK NENA at 3. The agencies decline to adopt this recommendation since allowing the Governor to appoint another officer or entity for purposes of the E–911 grant program where one already exists could lead to confusion and blurring of responsibilities, resulting in a negative impact on established 911 programs within the State.

Two commenters questioned the need for the Governor to make any designation when States already have designated a single point of contact for 911 under FCC procedures. PA EMA at 3–4; MO 911 Coordinator at 4–5. These commenters suggested that the agencies use this single point of contact instead. The agencies decline to adopt these suggestions, since there is an independent obligation to ensure the designation of an E–911 Coordinator for the specific purposes of this program. However, nothing precludes a State from using the same single officer or governmental body identified to the FCC to satisfy the designation requirement for the E–911 grant program.

One anonymous commenter and the WA E911 Office requested that the agencies publish a list of the E–911 Coordinators. WA E911 Office at 6. These comments are outside the scope of the rulemaking. This information will not be available until after all applications have been reviewed. At that time, the agencies will consider publishing a list of the E–911 Coordinators for the States that are awarded E–911 grants.

H. Application: Certification Concerning Diversion of Funds

The agencies received many comments regarding the requirement for certification that neither the State nor any taxing jurisdiction in the State has diverted designated E–911 charges. The ENHANCE 911 Act mandates that ''[e]ach applicant * * * shall certify * * * that no portion of any designated E–911 charges imposed by the State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented from 180 days preceding the date of the application and continuing through the period in which grant funds are available * * *.'' 47 U.S.C. 942(c). In the NPRM, the agencies proposed certification language that is nearly identical to this statutory language.

The WA E911 Office claims that this certification process discourages

applications, especially if States must return all grant funds if false or inaccurate information is provided in the certification. *See* WA E911 Office at 3–4. The WA E911 Office also commented that if the State does not apply because it cannot make the certifications regarding the diversion of funds, then local taxing jurisdictions and tribal organizations will not be able to apply and receive E–911 grant funds. Similarly, CSI–911 commented that if the Governor of the State has diverted designated E–911 charges, then local 911 systems that are using such designated charges for appropriate purposes will be unfairly disqualified from receiving E–911 grant funds. CSI–911 at 1. Several commenters thought that the State should only certify to the State's use of designated E–911 charges and should not be required to certify to local taxing jurisdictions' use of designated E–911 charges. *See, e.g.,* WA E911 Office at 3–4; TX CSEC at 2; NENA/NASNA at 7; AK NENA at 3. Some of these commenters suggested having each local taxing jurisdiction certify individually to its own use of designated E–911 charges. The WA E911 Office suggested modifying the language to add ''to the best of my knowledge'' and allowing the State to provide a description of the measures the State has taken to ensure that local taxing jurisdictions are not diverting funds. WA E911 Office at 2.

Although the agencies understand these commenters' concerns, the statutory language and certification requirement are clear and provide no discretion. If the State, as applicant, is unable to certify that it is not diverting designated E–911 charges, then neither the State nor any eligible entity located in the State may receive E–911 grant funds. The Act requires ''*each* applicant'' to certify that the State is not diverting any designated E–911 charges imposed by the State for any purpose other than the purposes for which such charges are designated or presented. 47 U.S.C. 942(c)(2) (emphasis added). This statutory certification is an affirmative requirement, and the agencies decline to make any of the changes recommended by the commenters regarding a State's diversion of E–911 funds.

The agencies, however, recognize the difficulty States may have in certifying that no taxing jurisdictions in the State are diverting E–911 charges and believe the Act provides discretion in one aspect. The MO 911 Coordinator and CSI–911 were concerned that a single taxing jurisdiction that independently diverts designated E–911 charges could preclude the entire State from receiving grant funds. *See* MO 911 Coordinator at 1; CSI–911 at 1. After careful consideration, the agencies have decided to amend the rule to allow States to qualify for E–911 grant funds even if a taxing jurisdiction is diverting designated E–911 charges, provided the State meets the following conditions: the State, itself, is not diverting and will not divert designated E–911 charges during the relevant time period and the State does not distribute E–911 grant funds to entities that are located in taxing jurisdictions where designated E–911 charges are being diverted during the relevant time period. For example, if a PSAP is located in a taxing jurisdiction where designated E–911 charges are being diverted for other purposes, the State may not distribute E–911 grant funds to that PSAP. However, the State may distribute grant funds to PSAPs in other taxing jurisdictions where designated E–911 charges are not being diverted, but must ensure that these taxing jurisdictions that receive E–911 grant funds do not divert designated E–911 charges while grant funds remain available. In addition, the State may use E–911 grant funds for a Statewide project or activity even though it may incidentally benefit PSAPs in a diverting jurisdiction as well as PSAPs in compliant jurisdictions. In any case, the State must certify that if a taxing jurisdiction that directly receives grant funds does divert E–911 charges, the State will ensure that those grant funds are returned to the government. The agencies have amended the rule and certification requirements to provide this flexibility. The amendments make no change to the requirement that the State certify that during the relevant time period, it has not diverted and will not divert designated E–911 charges imposed by the State for any other purpose, and that it will return all E–911 grant funds if the State diverts designated E–911 charges for any other purpose.

The NENA/NASNA commented that States that divert 911 fees after July 23, 2008 would not be in compliance with the NET 911 Act and asks that these States be ineligible for E–911 grant funds. NENA/NASNA at 7–8. The requirements of the NET 911 Act are separate from and unrelated to the requirements of the ENHANCE 911 Act. There is no statutory language in the NET 911 Act that would amend the explicit statutory requirement in the ENHANCE 911 Act that applicants must certify that during the 180 days before the date of the application and continuing through the time period that grant funds are available, the State and taxing jurisdictions did not divert designated E–911 charges for any other purpose. Consequently, the agencies decline to change the Final Rule in response to this comment.

I. Distribution of Grant Funds: Formula

The approach used in this formula is similar to formulae utilized by the Department of Transportation programs, including the Federal Transit Administration non-urbanized area grant formula and the Federal-Aid Highway Act of 1944 grant formula. Both programs utilize road infrastructure miles as a component of the formula for grant distribution. In this case, the road mileage serves as a proxy for the ''electronic information highway'' since many telecommunication and wireless carriers develop their systems along these routes. In the arena of wireless E–911, Phase II compliance would significantly improve emergency response along the highway system. The mileage aspect of this formula also serves as weight for coverage of geographic areas, including rural jurisdictions. The population aspects of the formula provide a balance to ensure that the funds would go to those areas in which the E–911 system would be improved to help as many Americans as possible. The agencies believe the result was an equitable distribution of the limited funds. The minimum was set based on the agencies' understanding that the cost of bringing at least one PSAP into Phase II compliance would be approximately $200,000–$250,000.

The comments about the proposed formula for distribution of E–911 grant funds were largely positive. However, one commenter, the AK NENA, requested that additional grant allocations be available for Alaska and other States that are still deploying basic 911 services as well as those lacking Statewide E–911 and wireless 911 capabilities. See AK NENA at 3. The AK NENA notes that States that have already achieved Statewide deployment of E–911 and wireless 911 capabilities have access to funding to support the deployment of Statewide emergency communications. Although the agencies recognize that States have varying levels of deployment, providing additional grant funds to those States that have not established funding to support the deployment of E–911 services unduly penalizes States that have taken steps to keep pace with advancing technologies. While the agencies also recognize the commenter's concerns about the greater needs of some communities, these needs are appropriately addressed through State planning, and that the formula distribution remains an equitable

approach. As a result, the agencies made no change to the formula.

J. Eligible Use of Funds

The agencies received numerous comments requesting clarification of the eligible uses of grant funds. In the NPRM, the agencies specified that grant funds could be used for the acquisition and deployment of hardware and software that enables compliance with Phase II E–911 services or that enables migration to an IP-enabled emergency network, or for training in the use of such hardware and software. The CA 911 Office asked whether grant funds could be used for all three activities. CA 911 Office at 5. The agencies intend that grant funds may be used for any or all of the three activities and have amended the rule to clarify this point.

Several commenters asked whether grant funds could be used to pay consultants. *See, e.g.,* NENA/NASNA at 8–9; MO 911 Coordinator at 5. In 47 CFR 400.9(a), the agencies identified the requirements of 49 CFR Part 18, including the cost principles referenced in 49 CFR 18.22, as applicable to the grants awarded under this program. In accordance with those cost principles, consultant costs are allowable provided that certain conditions are met. Commenters are directed to the applicable cost principles for detail. No change to the Final Rule is necessary in response to these comments.

Several commenters asked whether Statewide projects are eligible for funding under the E–911 grant program. *See, e.g.,* CA 911 Office at 2; WA E911 Office at 5–6; PA EMA at 2. Statewide E–911 projects are eligible, provided the State complies with the requirement that 90 percent of the funds be expended for the direct benefit of PSAPs, as discussed in Section IV.D.2. Although the agencies believe that States are in the best position to make specific deployment decisions, States are encouraged to consider those that would benefit the largest number of PSAPs when selecting Statewide projects. Some commenters specifically asked whether a Statewide project, such as establishing an emergency services IP network or ESInet, would be an eligible use. NENA/NASNA at 5; MO 911 Coordinator at 2. According to the NENA, ESInets ''are engineered, managed networks, and are intended to be multi-purpose, supporting extended Public Safety communications services, in addition to 9–1–1. ESInets use broadband, packet switched technology capable of carrying voice plus large amounts of varying types of data using Internet Protocols and standards.'' *See* NENA, ''A Policy Maker Blueprint for Transitioning to the Next Generation 9–1–1 System'' (September 2008). Based on this description, the agencies believe that establishing an ESInet would help enable PSAPs to migrate to an IP-enabled emergency network, and therefore, would be an eligible use.

The PA EMA requested a modification to allow grant applications to include a ''plan to plan'' and to allow grant funds to be used for the development of a more thorough State 911 plan. PA EMA at 4. The PA EMA noted that 60 days were insufficient to develop such a Statewide 911 plan in the manner envisioned by the NASNA Model State 9–1–1 Plan, the Act or the NPRM. As explained in Section IV.D. above, the State 911 Plan required under this grant program is not the comprehensive plan patterned after the Model Plan. The agencies believe that 60 days is adequate to establish the significantly less detailed coordination plan anticipated by the ENHANCE 911 Act. Moreover, the Act requires an applicant to certify that it has already established a plan for the implementation and coordination of E–911 services as a condition to apply for an E–911 grant. 47 U.S.C. 942(b)(3)(A)(iii). Allowing the E–911 grant funds to be used for plan development would be inconsistent with this statutory prerequisite. Consequently, the agencies decline to amend the rule to allow applicants to include a ''plan to plan'' and to use grant funds to develop a plan.

The NE PSC requested that eligible uses be expanded to include the costs incurred for rural addressing, purchase of street signs and the development of a master street address guide. NE PSC at 2. The agencies believe that such uses are only marginally related to the implementation and operation of E–911 services, and do not meet the purposes of the grant program. Consequently, the agencies decline to adopt this recommendation.

V. Statutory Basis for This Action

The Final Rule implements the grant program created by section 104 of the ENHANCE 911 Act of 2004, as amended (Pub. L. 108–494, codified at 47 U.S.C. 942), which requires the Administrator and the Assistant Secretary to issue joint implementing regulations prescribing the criteria for grant awards. Section 3011 of the Deficit Reduction Act of 2005 (Pub. L. 109–171, as amended by section 2301 of Pub. L. 110–53 and section 539 of Pub. L. 110–161) authorized funding for the ENHANCE 911 Act.

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. 58 FR 51735, Oct. 4, 1993. The Order defines a ''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 or 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 the Executive Order.

This rule was not reviewed by the Office of Management and Budget under Executive Order 12866. The rule is not considered to be significant within the meaning of Executive Order 12866 or the agencies' regulatory policies and procedures.

The rule does not affect amounts over the significance threshold of $100 million each year. The rule sets forth application procedures and showings to be made to be eligible for a grant. The funds to be distributed under the rule total $43.5 million, well below the annual threshold of $100 million. The rule does not 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 or communities. The rule does not create an inconsistency or interfere with any actions taken or planned by other agencies. The rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, the rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In consideration of the foregoing, the agencies have determined that this rule is not significant. The impacts of the

rule are minimal and a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, whenever an agency publishes a notice of rulemaking for any proposed or Final Rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). 5 U.S.C. 601 *et seq.* The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action would not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act of 1996 amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

NHTSA and NTIA have considered the effects of this rule under the Regulatory Flexibility Act. States are the recipients of funds awarded under the E–911 grant program and they are not considered to be small entities under the Regulatory Flexibility Act. Therefore, the agencies certify that this rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, ''Federalism,'' requires the agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 64 FR 43255, August 10, 1999. ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agencies have analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132, and have determined that this rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. Moreover, the Final Rule will not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' the agencies have considered whether this rulemaking would have any retroactive effect. 61 FR 4729, Feb. 7, 1996. This rule does not have any retroactive effect. This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There are reporting requirements contained in the Final Rule that are considered to be information collection requirements under the Paperwork Reduction Act, as that term is defined by OMB in 5 CFR Part 1320. The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. The submission of a State 911 Plan constitutes a new information collection under the Paperwork Reduction Act. The estimated total annual burden is 10,976 hours. The total estimated number of respondents is 56 (50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands).

Pursuant to the Act, the agencies solicited public comments on the proposed collection of information, with a 60-day comment period, in the notice of proposed rulemaking published on October 3, 2008 (73 FR 57567). In a **Federal Register** Notice published on May 19, 2009, the agencies announced that they submitted the information collection request to OMB for approval. (73 FR 23465). OMB approval for this information collection is pending.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule does not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the $100 million threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

The agencies have reviewed this rule for the purposes of the National Environmental Policy Act. The agencies have determined that this rule will not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agencies have analyzed this rule under Executive Order 13175, and have determined that the rule will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

You may review DOT's complete Privacy Act Statement in the **Federal Register**, 65 FR 19477, Apr. 11, 2000.

K. Congressional Review of Agency Rulemaking

The agencies have not submitted the Final Rule to the Congress and the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* This rule is not a ''major rule'' within the meaning of the Act.

List of Subjects in 47 CFR Part 400

Grant programs, Telecommunications, Emergency response capabilities (911).

■ In consideration of the foregoing, the National Highway Traffic Safety Administration, Department of Transportation, and the National Telecommunications and Information Administration, Department of Commerce establish a new Chapter IV consisting of Part 400 in Title 47 of the Code of Federal Regulations to read as follows:

CHAPTER IV—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE, AND NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 400—E–911 GRANT PROGRAM

Sec.

Authority: 47 U.S.C. 942.

§ 400.1 Purpose.

This part establishes uniform application, approval, award, financial and administrative requirements for the grant program authorized under the ''Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004'' (ENHANCE 911 Act), as amended.

§ 400.2 Definitions.

As used in this part—

Administrator means the Administrator of the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

Assistant Secretary means the Assistant Secretary for Communications and Information, U.S. Department of Commerce, and Administrator of the National Telecommunications and Information Administration (NTIA).

Designated E–911 charges mean any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve E–911 services.

E–911 Coordinator means a single officer or governmental body of the State that is responsible for implementing E–911 services in the State.

E–911 services mean both phase I and phase II enhanced 911 services, as described in 47 CFR 20.18.

Eligible entity means a State or local government or tribal organization, including public authorities, boards, commissions, and similar bodies created by such governmental entities to provide E–911 services.

ICO means the National E–911 Implementation Coordination Office established under 47 U.S.C. 942 for the administration of the E–911 grant program, located at the National Highway Traffic Safety Administration, US Department of Transportation, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590.

Integrated telecommunications services mean those entities engaged in the provision of multiple services, such as voice, data, image, graphics, and video services, which make common use of all or part of the same transmission facilities, switches, signaling, or control devices.

IP-enabled emergency network or IP-enabled emergency system means an emergency communications network or system based on a secured infrastructure that allows secured transmission of information, using Internet Protocol, among users of the network or system.

Phase II E–911 services mean phase II enhanced 911 services, as described in 47 CFR 20.18.

PSAP means a public safety answering point, a facility that has been designated to receive emergency calls and route them to emergency personnel.

State includes any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

§ 400.3 Who may apply.

In order to apply for a grant under this part, an applicant must be a State applying on behalf of all eligible entities within its jurisdiction.

§ 400.4 Application requirements.

(a) *Contents.* A State's application for funds for the E–911 grant program must consist of the following components:

(1) *State 911 Plan.* A plan that details the projects and activities proposed to be funded for the implementation and operation of Phase II E–911 services or migration to an IP-enabled emergency network, establishes metrics and a time table for grant implementation, and describes the steps the State has taken to—

(i) Coordinate its application with local governments, tribal organizations, and PSAPs within the State;

(ii) Ensure that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs and not more than 10 percent of the grant funds will be used for the State's administrative expenses related to the E–911 grant program;

(iii) Give priority to communities without 911 capability as of August 3, 2007 to establish Phase II coverage by identifying the percentage of grant funds designated for those communities or provide an explanation why such designation would not be practicable in successfully accomplishing the purposes of the grant;

(iv) Involve integrated telecommunications services in the implementation and delivery of Phase II E–911 services or for migration to an IP-enabled emergency network; and

(v) Employ the use of technologies to achieve compliance with Phase II E–911 services or for migration to an IP-enabled emergency network.

(2) *Project budget.* A project budget for all proposed projects and activities to be funded by the grant funds identified for the State in Appendix A and matching funds. Specifically, for each project or activity, the State must:

(i) Demonstrate that the project or activity meets the eligible use requirement in § 400.7; and

(ii) Identify the non-Federal sources, which meet the requirements of 49 CFR 18.24, that will fund at least 50 percent of the cost; except that as provided in 48 U.S.C. 1469a, the requirement for non-Federal matching funds (including in-kind contributions) is waived for American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands for grant amounts up to $200,000.

(3) *Supplemental project budget.* States that meet the qualification requirements for the initial distribution of E–911 grant funds may also qualify for additional grant funds that may become available. To be eligible for any such additional grant funds that may become available in accordance with

§ 400.6, a State must submit, with its application, a supplemental project budget that identifies the maximum dollar amount the State is able to match from non-Federal sources meeting the requirements of 49 CFR 18.24, and includes projects or activities for those grant and matching amounts, up to the total amount in the project budget submitted under paragraph (a)(2) of this section. This information must be provided to the same level of detail as required under paragraph (a)(2) of this section and be consistent with the State 911 Plan required under paragraph (a)(1) of this section.

(4) *Designated E–911 Coordinator.* The identification of a single officer or government body to serve as the E–911 Coordinator of implementation of E–911 services and to sign the certifications required under this part. If the State has established by law or regulation an office or coordinator with the authority to manage E–911 services, that office or coordinator must be identified as the designated E–911 Coordinator and apply for the grant on behalf of the State. If the State does not have such an office or coordinator established, the Governor of the State must appoint a single officer or governmental body to serve as the E–911 Coordinator in order to qualify for an E–911 grant. If the designated E–911 Coordinator is a governmental body, an official representative of the governmental body shall be identified to sign the certifications for the E–911 Coordinator. The State must notify NHTSA in writing within 30 days of any change in appointment of the E–911 Coordinator.

(5) *Certifications.* (i) The certification in Appendix B to this part, signed by the E–911 Coordinator, certifying that the State has complied with the required statutory and programmatic conditions in submitting its application. The State must certify that during the time period 180 days preceding the application date, the State has not diverted any portion of designated E–911 charges imposed by the State for any purpose other than the purposes for which such charges are designated, that no taxing jurisdiction in the State that will be a recipient of E–911 grant funds has diverted any portion of designated E–911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated, and that neither the State nor any taxing jurisdiction in the State that is a recipient of E–911 grant funds will divert designated E–911 charges for any purpose other than the purposes for which such charges are designated throughout the time period during which grant funds are available.

(ii) Submitted on an annual basis 30 days after the end of each fiscal year during which grant funds are available, the certification in Appendix C to this part, signed by the E–911 Coordinator, making the same certification as required under paragraph (a)(5)(i) of this section concerning the diversion of designated E–911 charges.

(b) *Due date.* The State must submit the application documents identified in this section so that they are received by the ICO no later than August 4, 2009. Failure to meet this deadline will preclude the State from receiving consideration for an E–911 grant award.

§ 400.5 Approval and award.

(a) The ICO will review each application for compliance with the requirements of this part.

(b) The ICO may request additional information from the State, with respect to any of the application submission requirements of § 400.4, prior to making a recommendation for an award. Failure to submit such additional information may preclude the State from further consideration for award.

(c) The Administrator and Assistant Secretary will jointly approve and announce, in writing, grant awards to qualifying States no later than September 30, 2009.

§ 400.6 Distribution of grant funds.

(a) *Initial distribution.* Subject to paragraph (b) of this section, grant funds for each State that meets the requirements in § 400.4 will be distributed—

(1) 50 percent in the ratio which the population of the State bears to the total population of all the States, as shown by the latest available Federal census; and

(2) 50 percent in the ratio which the public road mileage in each State bears to the total public road mileage in all States, as shown by the latest available Federal Highway Administration data.

(b) *Minimum distribution.* The distribution to each qualifying State under paragraph (a) of this section shall not be less than $500,000, except that the distribution to American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands shall not be less than $250,000.

(c) *Supplemental distribution.* Grant funds that are not distributed under paragraph (a) of this section will be redistributed among qualifying States that have met the requirements of § 400.4, including the submission of a supplemental project budget as provided in § 400.4(a)(3), in accordance with the formula in paragraph (a) of this section.

§ 400.7 Eligible uses for grant funds.

Grant funds awarded under this part may be used only for the acquisition and deployment of hardware and software that enables the implementation and operation of Phase II E–911 services, for the acquisition and deployment of hardware and software to enable the migration to an IP-enabled emergency network, for the training in the use of such hardware and software, or for any combination of these uses, provided such uses have been identified in the State 911 Plan.

§ 400.8 Non-compliance.

In accordance with 49 U.S.C. 942(c), where a State provides false or inaccurate information in its certification related to the diversion of E–911 charges, the State shall be required to return all grant funds awarded under this part.

§ 400.9 Financial and administrative requirements.

(a) *General.* The requirements of 49 CFR part 18, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including applicable cost principles referenced at 49 CFR 18.22, govern the implementation and management of grants awarded under this part.

(b) *Reporting requirements.*

(1) *Performance reports.* Each grant recipient shall submit an annual performance report to NHTSA, following the procedures of 49 CFR 18.40, within 90 days after each fiscal year that grant funds are available, except when a final report is required under § 400.10(b)(2).

(2) *Financial reports.* Each grant recipient shall submit quarterly financial reports to NHTSA, following the procedures of 49 CFR 18.41, within 30 days after each fiscal quarter that grant funds are available, except when a final voucher is required under § 400.10(b)(1).

§ 400.10 Closeout.

(a) *Expiration of the right to incur costs.* The right to incur costs under this part expires on September 30, 2012. The State and its subgrantees and contractors may not incur costs for Federal reimbursement past the expiration date.

(b) *Final submissions.* Within 90 days after the completion of projects and activities funded under this part, but in no event later than the expiration date identified in paragraph (a) of this section, each grant recipient must submit—

(1) A final voucher for the costs incurred. The final voucher constitutes

the final financial reconciliation for the grant award.

(2) A final report to NHTSA, following the procedures of 49 CFR 18.50(b).

(c) *Disposition of unexpended balances.* Any funds that remain unexpended by the end of fiscal year 2012 shall cease to be available to the State and shall be returned to the government.

APPENDIX A TO PART 400—MINIMUM GRANT AWARDS AVAILABLE TO QUALIFYING STATES

State name	Minimum E–911 grant award
Alabama	$686,230.25
Alaska	500,000.00
American Samoa	250,000.00
Arizona	627,067.26
Arkansas	594,060.05
California	2,841,352.77
Colorado	662,637.98
Connecticut	500,000.00
Delaware	500,000.00
District of Columbia	500,000.00
Florida	1,579,728.30
Georgia	1,063,089.13
Guam	250,000.00
Hawaii	500,000.00
Idaho	500,000.00
Illinois	1,343,670.10
Indiana	783,700.36
Iowa	668,545.47
Kansas	770,896.23
Kentucky	584,385.38
Louisiana	511,974.11
Maine	500,000.00
Maryland	500,000.00
Massachusetts	527,000.57
Michigan	1,108,704.89
Minnesota	874,841.32
Mississippi	500,000.00
Missouri	891,711.03
Montana	500,000.00
Northern Mariana Islands	250,000.00
Nebraska	508,655.45
Nevada	500,000.00
New Hampshire	500,000.00
New Jersey	666,876.13
New Mexico	500,000.00
New York	1,603,343.25
North Carolina	971,280.91
North Dakota	500,000.00
Ohio	1,203,583.60
Oklahoma	700,339.78
Oregon	500,000.00
Pennsylvania	1,242,455.97
Puerto Rico	500,000.00
Rhode Island	500,000.00
South Carolina	541,705.79
South Dakota	500,000.00
Tennessee	751,822.46
Texas	2,702,727.44
Utah	500,000.00
Vermont	500,000.00
Virgin Islands	250,000.00
Virginia	758,028.12
Washington	734,176.40
West Virginia	500,000.00
Wisconsin	820,409.48
Wyoming	500,000.00
Total Available E–911 Grant Funds	41,325,000.00

BILLING CODE 4910–59–P

Appendix B To Part 400 --

Initial Certification For E-911 Grant Applicants

(To be submitted as part of the application)

I. On behalf of [*State or Territory*], I, [*print name*], hereby certify that:

(check **only one** box below)

☐ [*State or Territory*] has established by law or regulation [*name of 911 office/coordinator*] with the authority to manage E-911 services in the State, and I am its representative. *See* [*citation to State law or rule*]. [*Name of 911 office/coordinator*] will serve as the designated E-911 Coordinator.

☐ [*State or Territory*] does not have an office or coordinator with the authority to manage E-911 services, and the Governor of [*State or Territory*] has designated

(check **only one** circle below)

- o me as the State's single officer to serve as the E-911 Coordinator of E-911 services implementation; or
- o [*governmental body*] as the State's single governmental body, to serve as the E-911 Coordinator of E-911 services implementation, and I am its representative.

(check **all** boxes below)

☐ The State has coordinated the application with local governments, tribal organizations and PSAPs within the State.

☐ The State has established a State 911 Plan, consistent with the implementing regulations, for the coordination and implementation of E-911 services or for migration to an IP-enabled emergency network.

☐ The State will ensure that at least 90 percent of the grant funds are used for the direct benefit of PSAPs.

☐ The State has integrated telecommunications services involved in the implementation and delivery of Phase II E-911 services or migration to an IP-enabled emergency network.

☐ The State will provide at least 50 percent of the cost of each project funded under this grant from non-Federal sources or the Territory will comply with the

matching requirement of 47 C.F.R. § 400.4(a)(2)(ii) (as applicable), consistent with the requirements of 49 C.F.R. § 18.24.

II. I further certify that the State has not diverted and will not divert any portion of designated E-911 charges imposed by the State for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing throughout the time period during which grant funds are available.

I further certify that no taxing jurisdiction in the State that will receive E-911 grant funds has diverted any portion of the designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application.

I further certify that the State will ensure that each taxing jurisdiction in the State that receives E-911 grant funds does not divert any portion of designated E-911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available.

I agree that, as a condition of receipt of the grant, the State will return all grant funds if the State obligates or expends, at any time for the full duration of this grant, designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented, and that the State will ensure that if a taxing jurisdiction in the State that receives E-911 grant funds diverts any portion of designated E-911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available, the State will ensure that E-911 grant funds distributed to that taxing jurisdiction are returned.

III. I further certify that the State will comply with all applicable laws and regulations and financial and programmatic requirements for Federal grants.

_____ _____

Signature of State E-911 Coordinator (or representative of single governmental body)

Date

_____

Title

APPENDIX C TO PART 400 --

ANNUAL CERTIFICATION FOR E-911 GRANT RECIPIENTS

(To be submitted annually after grant award while grant funds are available)

On behalf of [*State or Territory*], I, [*print name*], hereby certify that:

(check **only one** box below)

☐ [*State or Territory*] has established by law or regulation [*name of 911 office/coordinator*] with the authority to manage E-911 services in the State, and I am its representative. *See* [*citation to State law or rule*]. [*Name of 911 office/coordinator*] will serve as the designated E-911 Coordinator.

☐ [*State or Territory*] does not have an office or coordinator with the authority to manage E-911 services, and the Governor of [*State or Territory*] has designated

(check **only one** circle below)

- o me as the State's single officer to serve as the E-911 Coordinator of E-911 services implementation; or

- o [*governmental body*] as the State's single governmental body, to serve as the E-911 Coordinator of E-911 services implementation, and I am its representative.

I further certify that the State has not diverted and will not divert any portion of designated E-911 charges imposed by the State for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing throughout the time period during which grant funds are available.

I further certify that no taxing jurisdiction in the State that will receive E-911 grant funds has diverted any portion of the designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application.

I further certify that the State will ensure that each taxing jurisdiction in the State that receives E-911 grant funds does not divert any portion of designated E-911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available.

I agree that, as a condition of receipt of the grant, the State will return all grant funds if the State obligates or expends, at any time for the full duration of this grant, designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented, and that the State will ensure that if a taxing jurisdiction in the

State that receives E-911 grant funds diverts any portion of designated E-911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available, the State will ensure that E-911 grant funds distributed to that taxing jurisdiction are returned.

Signature of State E-911 Coordinator
(or representative of single governmental body)

Date

Title

Issued on: June 2, 2009.

Ronald Medford,

Acting Deputy Administrator, National Highway Traffic Safety Administration.

Anna M. Gomez,

Acting Assistant Secretary for Communications and Information.

[FR Doc. E9–13206 Filed 6–4–09; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2005–29, Amendment–4; FAR Case 2007–013; Docket 2008–0001; Sequence 19]

RIN 9000–AK91

Federal Acquisition Regulation; FAR Case 2007–013, Employment Eligibility Verification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Amendment to final rule; delay of applicability date.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have agreed to delay the applicability date of FAR Case 2007–013, Employment Eligibility Verification, to September 8, 2009.

DATES: *Applicability Date*: The applicability date of FAC 2005–29, Amendment–3, published April 17, 2009, 74 FR 17793, is delayed until September 8, 2009.

Contracting officers shall not include the new clause at 52.222–54, Employment Eligibility Verification, in any solicitation or contract prior to the applicability date of September 8, 2009.

On or after September 8, 2009, contracting officers—

• Shall include the clause in solicitations, in accordance with the clause prescription at 22.1803 and FAR 1.108(d)(1); and

• Should modify, on a bilateral basis, existing indefinite-delivery/indefinite-quantity contracts in accordance with FAR 1.108(d)(3) to include the clause for future orders if the remaining period of performance extends **beyond March 8, 2010**, and the amount of work or number of orders expected under the remaining performance period is substantial.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for further information pertaining to status or publication schedule. Please cite FAC 2005–29 (delay of applicability date).

SUPPLEMENTARY INFORMATION: This document extends to September 8, 2009, the applicability date of the E-Verify rule, in order to permit the new Administration an adequate opportunity to review the rule.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–29, Amendment–4, is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The Federal Acquisition Regulation (FAR) contained in FAC 2005–29 was effective January 19, 2009, and is applicable September 8, 2009.

Dated: May 29, 2009.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: June 1, 2009.

Rodney P. Lantier,

Acting Senior Procurement Executive & Acting Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: May 29, 2009.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–13124 Filed 6–4–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 1

[Docket No. DOT–OST–1999–6189]

RIN 9991–AA55

Organization and Delegation of Powers and Duties: Federal Railroad Administrator and Federal Transit Administrator

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule delegates all of the authorities vested in the Secretary of Transportation (Secretary) by the Rail Safety Improvement Act of 2008 to the Administrator of the Federal Railroad Administration (FRA). This final rule also delegates the authorities vested in