

### Qualifications of Personnel

A mine operator is responsible for the design, construction, operation, and maintenance of dams. For an effective dam safety program, an operator must use personnel who are knowledgeable about dam safety.

19. What qualifications do mine operators currently require of persons who design, inspect, operate, and manage dams? In what capacities are engineers used? Please be specific in your response.

20. The Guidelines recommend that dams be designed by competent engineers. What specific qualifications or credentials should persons who design dams possess? Please include your rationale.

21. The Guidelines recommend that a dam be constructed under the general supervision of a competent engineer knowledgeable about dam construction. What specific qualifications or credentials should a person have who verifies that a dam is being constructed as designed? Please provide your rationale.

22. What training should personnel receive who perform frequent, routine inspections and who monitor instrumentation at dams? In your response, please suggest course content and the frequency of the training, including the rationale for your recommendations.

23. What qualifications or credentials should be required of persons who perform detailed inspections to evaluate the safety of a dam? Please be specific and include your rationale.

### Abandonment of Dams

24. Some regulatory authorities require that dam owners obtain approval of a plan to cap, breach, or otherwise safely abandon dams. What actions should mine operators take to safely abandon dams? Please include specific suggestions and rationale.

25. How can MSHA verify that a mine operator has safely abandoned a dam?

### Economic Impact

MSHA seeks information to assist the Agency in deriving the costs and benefits of any regulatory changes for dams at metal and nonmetal mines. In answering the following questions, please indicate the dam's storage capacity, height, and hazard potential and characterize the complexity of each dam referenced. Also, please include the state where each dam is located, and the number of employees at the mine.

26. What are the costs of designing a new dam? Please provide details such as hours, rates of pay, job titles, and any

contractual services necessary. How often is the design of an existing dam changed? What are the costs of a redesign?

27. What are the costs of constructing a dam? Please provide details based on: Size of dam; labor costs, including hours, rates of pay, job titles; costs of equipment and materials; and any contractual services necessary.

28. Please describe the oversight you provide during dam construction to assure it complies with the design plan. How much does it cost per year per dam for oversight and quality control? What special knowledge, qualifications, or credentials do you require of those who provide oversight?

29. How often do you add height to an existing dam or modify it in some other way? Who supervises the design and construction of these modifications, for example, a professional engineer, competent engineer, contractor, etc? Please be specific and provide rationale for your answer. How much does it cost? Please provide details such as labor costs, including hours, rates of pay, job titles, and costs of equipment and materials and any contractual services necessary.

30. How much does it cost per year per dam for routine inspections? If you incur separate costs for monitoring instrumentation, how much is that cost? How often do you have a detailed inspection conducted? How much does it cost per year for these inspections?

31. Does the state or local jurisdiction in which you operate require you to use a professional engineer? If so, when is a professional engineer specifically required? (If you have dams in more than one state please identify which states require a professional engineer and which do not).

32. What are the costs associated with training personnel who conduct frequent, routine inspections and monitor instrumentation at dams?

33. What costs are involved in capping, breaching, or otherwise properly abandoning a dam? Please provide details of your experience and what was involved when you properly abandoned a dam. Describe any impact of a properly abandoned dam.

34. What are the costs to a mine operator if a dam fails? Please characterize other impacts such as loss of life, environmental damage, etc.

35. Do you have insurance against a dam failure? If so, please specify cost and coverage. Does the insurance carrier require the use of a professional engineer for specific dam activities? If a professional engineer is not required, does the insurance carrier give a discount if one is used? Does your

insurance company have any other requirements related to dam safety?

36. What quantifiable and non-quantifiable costs and benefits for the downstream community are involved when a dam is properly designed and constructed? In addition, MSHA welcomes comments on other relevant indirect costs and benefits.

Dated: August 9, 2010.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

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**BILLING CODE 4510-43-P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 222

[Docket ID ED-2010-OESE-0013]

RIN 1810-AB11

### Impact Aid Programs

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the Impact Aid Discretionary Construction Program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). Through this program, the Department provides competitive grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that receive Impact Aid formula funds. The proposed regulations amend a provision regarding the submission of applications for these Federal funds, which the Department believes will improve the administration and distribution of funds under this program. The proposed regulations would apply to the grant competitions after the competition for fiscal year (FY) 2009 funds.

**DATES:** We must receive your comments on or before September 13, 2010.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> to submit your comments electronically.

Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."

• *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Catherine Schagh, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E105, LBJ, Washington, DC 20202.

**Privacy Note:** The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at <http://www.regulations.gov>. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

**FOR FURTHER INFORMATION CONTACT:**

Kristen Walls-Rivas, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260-1357 or by e-mail: [Kristen.Walls-Rivas@ed.gov](mailto:Kristen.Walls-Rivas@ed.gov).

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:**

**Invitation To Comment**

We invite you to submit comments regarding these proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in Room 3C101, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

The Impact Aid Discretionary Construction Program is authorized under section 8007(b) of the ESEA.

The purpose of this program is to assist certain eligible Impact Aid LEAs in meeting the emergency or modernization needs of their school facilities. The current regulations governing the Impact Aid Discretionary Construction Program are in 34 CFR 222.170 through 222.196 and were most recently amended on March 15, 2004, to govern the FY 2003 and subsequent grant competitions (69 FR 12234). Through this notice, we are proposing to amend § 222.183 governing the submission of multiple grant applications. The proposed amendment is based on our experience in implementing this program since the most recent regulations were published in 2004.

**Significant Proposed Regulations**

*Section 222.183 How does an LEA apply for a grant?*

*Statute:* Section 8007(b)(6) of the ESEA provides that an LEA that desires to receive a grant shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

*Current Regulations:* Current § 222.183 specifies several application requirements, and provides that a local educational agency (LEA) may submit multiple applications for multiple educational facilities in a fiscal year.

*Proposed Regulations:* The proposed regulations would limit an LEA to submitting one application for one facility per competition.

*Reasons:* In 2004, when the most recent Impact Aid Discretionary Construction Program regulations were issued, the Department did not know how many LEAs would qualify for funding nor what the magnitude of their need would be under this program. Accordingly, we originally provided in the regulations that an applicant could

submit multiple applications per competition so that the applicant would be able to separate into different applications different types of projects with different levels of urgency.

Our intent was to make the competition flexible and to ensure that we received enough high-quality applications to enable the Department to use the full appropriated amount.

The competitions under this program are based primarily on statutorily mandated objective and subjective scoring. Objective scores measure: the percentage of students in the LEA who are eligible under section 8003 of the Impact Aid Program; the percentage of those students enrolled in the building for which funding is sought; the area of tax-exempt Federal property in the LEA; and the LEA's assessed value of real property and its tax rate. If an LEA receives high scores on these objective criteria, its proposed projects may rank higher on the funding list than the condition of its building(s) (i.e., the subjective measure) would warrant, and LEAs with more urgent facility needs would not be funded. This has resulted in the unintended consequence of a few LEAs receiving high percentages of the available funding. For example, from the FY 2006 competition, one LEA received 13 out of 25 grants and 73 percent of the funds.

In addition, since this program was first funded and operated under the March 15, 2004, final regulations, the appropriation levels have decreased significantly, from \$27 million (in FY 2003) to approximately \$17 million (in FY 2009). With this reduction and given the scoring structure, if a single applicant receives multiple awards, an even smaller portion of the remaining funds is available for distribution to other LEAs, which generally has meant that the funds could not reach a larger pool of the eligible applicants.

These proposed regulations would give more applicants an opportunity to receive grants to remediate urgent emergency and modernization needs in their school facilities. We seek comments on alternative approaches that would permit the Department to distribute grant funding to a larger number of LEAs.

*Executive Order 12866:* Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect

on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an “economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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. Pursuant to the terms of the Executive order, it has been determined that this regulatory action is not a significant regulatory action subject to OMB review under section 3(f) of Executive Order 12866.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum on “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small LEAs receiving Federal funds under this program. In the FY 2008 grant competition, fewer than 50 applications that were eligible to be evaluated by field readers were from small entities. In addition, we do not believe that the regulations would have a significant economic impact on the limited number of small LEAs affected, because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision.

The proposed regulations would benefit both small and large entities in that they would provide more equitable opportunities for funding of school construction needs.

The proposed regulations would impose minimal paperwork burden requirements for all applicants and minimal requirements with which the grant recipients must comply. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Impact Aid Discretionary Construction Program. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible.

#### *Paperwork Reduction Act of 1995*

The proposed amendment to § 222.183 would modify the information collection requirements in that section; the Department does not believe the proposed changes add any new burden or decrease any burden to local educational agencies. The burden associated with § 222.183 was approved by OMB under OMB Control Number 1810–0687, which expires 9/30/2011. The proposed amendment would limit the number of applications to one per LEA. The Department expects that LEAs that have in the past scored lower on the objective scoring criteria will be encouraged to apply and the total number of applications will remain the same.

#### *Intergovernmental Review*

This program is subject to Executive Order 12372 and the regulations in 34

CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

#### *Assessment of Educational Impact*

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.041 Impact Aid Discretionary Construction Program)

#### **List of Subjects in 34 CFR Part 222**

Education, Education of children with disabilities, Educational facilities, Elementary and secondary education, Federally affected areas, Grant programs—education, Indians—education, Public housing, Reporting and recordkeeping requirements, School construction, Schools.

**Thelma Meléndez de Santa Ana**,  
*Assistant Secretary for Elementary and Secondary Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend part 222 of title 34 of the Code of Federal Regulations.

#### **PART 222—IMPACT AID PROGRAMS**

1. The authority citation for part 222 continues to read as follows:

**Authority:** 20 U.S.C. 7701–7714, unless otherwise noted.

2. Section 222.183 is amended by revising paragraph (a) to read as follows:

**§ 222.183 How does an LEA apply for a grant?**

(a) To apply for funds under this program, an LEA may submit only one application for one educational facility for each competition.

\* \* \* \* \*

[FR Doc. 2010-20065 Filed 8-12-10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 93**

[EPA-HQ-OAR-2009-0128; FRL-9188-5]

RIN 2060-AP57

**Transportation Conformity Rule Restructuring Amendments**

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

**ACTION:** Proposed rule.

**SUMMARY:** In this action, EPA is proposing to restructure several sections of the transportation conformity rule so that they would apply to any new or revised National Ambient Air Quality Standards (NAAQS) that are established in the future for transportation-related criteria pollutants. This proposal should reduce the need to amend the rule in the future for the sole purpose of referencing specific new or revised NAAQS. EPA is also proposing in this action that a near-term year would have to be analyzed when using the budget test when an area's attainment date has passed, or when an area's attainment date has not yet been established. The budget test demonstrates that the total on-road emissions projected for a metropolitan transportation plan or TIP are within the emissions limits ("budgets") established by the state air quality implementation plan ("SIP").

This action also includes several administrative proposals and clarifications to improve implementation of the rule.

The Clean Air Act (CAA) requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with ("conform to") the purpose of the state air quality implementation plan. The U.S. Department of Transportation (DOT) is EPA's Federal partner in implementing the transportation conformity regulation. EPA has consulted with DOT, and they concur with this proposed rule.

**DATES:** Written comments on this proposal must be received on or before September 13, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0128, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-9744.

- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2009-0128. Please include a total of two copies.

- *Hand Delivery:* Air Docket, Environmental Protection Agency: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA-HQ-OAR-2009-0128. Please include two copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0128. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:**

Patty Klavon, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: [klavon.patty@epa.gov](mailto:klavon.patty@epa.gov), telephone number: (734) 214-4476, fax number: (734) 214-4052; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: [berry.laura@epa.gov](mailto:berry.laura@epa.gov), telephone number: (734) 214-4858, fax number: (734) 214-4052.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

- I. General Information
- II. Background on the Transportation Conformity Rule
- III. Restructure of 40 CFR 93.109
- IV. Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies
- V. Baseline Year for Certain Nonattainment Areas
- VI. Transportation Conformity Requirements for Secondary NAAQS
- VII. Analysis of a Near-Term Year in the Budget Test
- VIII. How does this proposal affect conformity SIPs?
- IX. Statutory and Executive Order Reviews