FNS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FNS as required, any subsequent fiscal claim asserted by FNS. In such cases a collateral bond or irrevocable letter of credit shall be furnished to FNS with the payment, or a schedule of intended payments, of the civil money penalty. A buyer or transferee shall not, as result of the transfer or purchase of a disqualified firm, be required to furnish a bond or letter of credit prior to authorization.

* * * * *

■ 3. In § 278.2, revise paragraph (f) to read as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(f) *Paying credit accounts.* Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year.

* * * * *

■ 4. In § 278.6:

■ a. Revise paragraph (e)(4); and

■ b. Amend paragraph (h) by adding the words ''or irrevocable letter of credit'' after the word ''bond'' wherever it appears. The revision reads as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

* * * * *

(e) * * *

(4) Disqualify the firm for 1 year if:

(i) It is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) The firm has accepted food stamp benefits in payment for items sold to a household on credit.

* * * * *

■ 5. In § 278.7, revise paragraph (b) to read as follows:

§ 278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.

* * * * *

(b) *Forfeiture of a collateral bond or draw down on an irrevocable letter of credit.* If FNS establishes a claim against an authorized firm which has previously been sanctioned, collection of the claim may be through total or partial forfeiture of the collateral bond or draw down of the irrevocable letter of credit. If FNS determines that forfeiture or a draw down is required for collection of the claim, FNS shall take one or more of the following actions, as appropriate.

(1) Determine the amount of the bond to be forfeited or irrevocable letter of credit drawn down on the basis of the loss to the Government through violations of the Act, and this Part, as detailed in a letter of charges to the firm;

(2) Send written notification by method of proof of delivery to the firm and the bonding agent or commercial bank of FNS' determination regarding forfeiture or draw down of all or specified part of the collateral bond or irrevocable letter of credit and the reasons for the forfeiture or draw down action;

(3) Advise the firm and the bonding agent or commercial bank of the firm's right to administrative review of the claim determination;

(4) Advise the firm and the bonding agent or commercial bank that if payment of the current claim is not received directly from the firm, FNS shall obtain full payment through forfeiture of the bond or draw down of the irrevocable letter of credit;

(5) Proceed with collection of the bond or irrevocable letter of credit in the amount forfeited or drawn down if a request for review is not filed by the firm within the period established in § 279.5 of this chapter, or if such review is unsuccessful; and

(6) Upon the expiration of time permitted for the filing of a request for administrative and/or judicial review, deposit the bond or irrevocable letter of credit in a Federal Reserve Bank account or in the Treasury Account, General. If FNS requires only a portion of the face value of the bond or irrevocable letter of credit to satisfy a claim, the entire bond or irrevocable letter of credit will be negotiated, and the remaining amount returned to the firm.

* * * * *

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

■ 6. In § 279.1, revise paragraph (a)(6) to read as follows:

§ 279.1 Jurisdiction and authority.

* * * * *

(a) * * *

(6) Forfeiture of part or all of a collateral bond or a draw down of part or all of a letter of credit under § 278.1 of this chapter, if the request for review is made by the authorized firm. FNS shall not accept requests for review made by a bonding company or agent or commercial bank.

* * * * *

■ 7. In § 279.4, revise the last sentence in paragraph (a) to read as follows:

§ 279.4 Action upon receipt of a request for review.

* * * If the administrative action in question involves the denial of a claim brought by a firm against FNS, or the forfeiture of a collateral bond or the draw down on an irrevocable letter of credit, the designated reviewer shall direct the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture or irrevocable letter of credit withdrawal, as appropriate until the designated reviewer has made a determination.

* * * * *

Dated: December 18, 2008.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. E8–30951 Filed 12–29–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

RIN 1601–AA54

Designation of Malta for the Visa Waiver Program

AGENCY: Office of the Secretary; DHS.

ACTION: Final rule; technical amendment.

SUMMARY: Citizens and eligible nationals of participating Visa Waiver Program countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of 90 days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. This rule adds Malta to the list of countries authorized to participate in the Visa Waiver Program.

DATES: This final rule is effective on December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Marc Frey, Department of Homeland Security, Office of Policy, (202) 282–9555.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, may designate certain countries as Visa Waiver Program (VWP) countries if certain requirements are met. Those requirements include, without limitation, (1) meeting the statutory rate of nonimmigrant visa refusal for nationals of the country; (2) a government certification that it has a program to issue machine readable, tamper-resistant passports that comply with International Civil Aviation Organization (ICAO) standards; (3) a U.S. government determination that the country's designation would not negatively affect U.S. law enforcement and security interests; (4) government agreement to report, or make available to the U.S. government information about the theft or loss of passports; (5) the government accepts for repatriation any citizen, former citizen, or national not later than three weeks after the issuance of a final order of removal; and (6) the government enters into an agreement with the United States to share information regarding whether citizens or nationals of that country represent a threat to the security or welfare of the United States or its citizens.

The INA also sets forth requirements for continued eligibility and, where appropriate, termination of program countries.

Citizens and eligible nationals of VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of 90 days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. The designated countries in the VWP include Andorra, Australia, Austria, Belgium,[1] Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.[2] *See* 8 CFR 217.2(a).

To travel to the United States under the VWP, an alien must be from a participating country and must (1) be seeking entry as a tourist for a period of 90 days or less; (2) be a national of a VWP participant country; (3) present an electronic passport or a machine readable passport issued by a designated VWP participant country to the air or vessel carrier before departure; [3] (4) execute the required immigration forms; (5) if arriving by air or sea, arrive on an authorized carrier; (6) not represent a threat to the welfare, health, safety or security of the United States; (7) have not violated U.S. immigration law during a previous admission under the visa waiver program; (8) possess a round trip ticket; and (9) waive the right to review or appeal a decision regarding admissibility or to contest other than on the basis of an application for asylum, any action for removal. *See* Sections 217(a) and 217(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1187(a)–(b). *See also* 8 CFR part 217.

DHS, in consultation with the Department of State, has evaluated the country of Malta for VWP designation to ensure the country meets the requirements set forth in section 711 of the 9/11 Act and section 217 of the INA. The Secretary has determined that Malta has satisfied the statutory requirements to be a VWP country; therefore, the Secretary, in consultation with the Secretary of State, has designated Malta as a VWP program country.[4]

This final rule adds Malta to the list of countries authorized to participate in the VWP. Accordingly, beginning December 30, 2008, citizens and eligible nationals from Malta may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of 90 days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. Malta has agreed that its citizens must obtain an approved travel authorization from CBP via the Electronic System for Travel Authorization and must possess a valid electronic passport. For more information about the Electronic System for Travel Authorization program, please see the interim final rule at 73 FR 32440.

II. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule merely lists a country that the Secretary of Homeland Security, in consultation with the Secretary of State, has designated as a VWP eligible country in accordance with 8 U.S.C. 1187(c). This amendment is a technical change to update the list of VWP eligible countries. Therefore, notice and comment for this rule is unnecessary and contrary to the public interest because the rule has no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. We do not anticipate receiving meaningful comments on this rule because Malta has already been designated as VWP-eligible. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

This final rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it advances the President's foreign policy goals, involves a bilateral agreement that the United States has entered into with Malta, and directly involves relationships between the United States and its alien visitors. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required ''to publish a general notice of

[1] Since May 15, 2003, citizens of Belgium have had to present a machine-readable passport in order to be granted admission under the Visa Waiver Program.

[2] The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

[3] For countries designated as VWP member countries prior to November 17, 2008, passports issued before October 26, 2006, need not contain the electronic chip that includes the biographic and biometric information of the passport holder provided the passports comply with International Civil Aviation Organization machine readable standards.

[4] The Secretary of State nominated Malta for membership in the VWP on December 17, 2008.

proposed rulemaking for any proposed rule.'' Because this rule is being issued as a final rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, there is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity.

C. Unfunded Mandates Reform Act of 1995

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

D. Executive Order 12866

This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

E. Executive Order 13132

The rule will not 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. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

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

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to the Regulations

■ For the reasons stated in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217), as set forth below.

PART 217—VISA WAIVER PROGRAM

■ 1. The general authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 2. In § 217.2 the definition of the term ''Designated country'' in paragraph (a) is revised to read as follows:

§ 217.2 Eligibility.

(a) * * *

Designated country refers to Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver Program.

* * * * *

Paul A. Schneider,

Deputy Secretary.

[FR Doc. E8–30818 Filed 12–29–08; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 101, 102, 104, 110, 113, 400, 9001, 9003, 9031, 9033

Notice 2008–14; Repeal of Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission (''Commission'') is removing its rules on increased contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing self-financed opponents. These rules were promulgated to implement sections 304 and 319 of the Bipartisan Campaign Reform Act of 2002, known as the ''Millionaires' Amendment.'' In *Davis* v. *Federal Election Commission,* the Supreme Court held that sections 319(a) and (b), regarding House of Representatives elections, were unconstitutional. The Court's analysis also applies to the contribution and spending limits in section 304 regarding Senate elections. The Commission, therefore, is removing its rules that implement the Millionaires' Amendment. However, the Commission is retaining certain other rules that were not affected by the *Davis* decision. Further information is provided in the supplementary information that follows.

DATES: *Effective Date:* February 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is revising its regulations to reflect the Supreme Court's decision in *Davis* v. *Federal Election Commission,* 128 S. Ct. 2759 (2008). The Commission is deleting rules that implemented the Millionaires' Amendment at 11 CFR 100.19(g), 104.19, 110.5(b)(2), and Part 400. It is making technical and conforming changes to its rules at 11 CFR 100.33, 101.153, 101.1, 102.2(a)(1)(viii), 113.1(g)(6)(ii), 9001.1, 9003.1(b)(8), 9031.1, and 9033.1(b)(10). It is retaining unchanged its rules at 11 CFR 110.1(b)(3)(ii)(C), 116.11, 116.12, and 9035.2(c).

The Commission published a Notice of Proposed Rulemaking (''NPRM'') on October 20, 2008, in which it sought public comment on the proposed rule implementing the *Davis* decision. *See Notice of Proposed Rulemaking on Increased Contribution and Expenditure Limits for Candidates Opposing Self-financed Candidates,* 73 FR 62224 (Oct. 20, 2008). In addition, the Commission sought public comment on its proposal to retain 11 CFR 116.11 and 116.12, which concern the repayment of candidate's personal loans. *Id.* at 62226. The comment period ended on November 21, 2008.

The Commission received four comments on the proposed rule, including a comment from the Internal Revenue Service (''IRS'') stating that the proposed rules did not conflict with the Internal Revenue Code or IRS regulations.

For the reasons explained below, the Commission has decided to delete its rules that implemented the Millionaires' Amendment, and to retain and revise certain other rules that were not invalidated by the *Davis* decision. The