

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|----------------------------|---|---|
| (2) 2 CFR 182.300(b) | § 1329.300 | Whom in the Department of Commerce a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 1329.500 | Who in the Department of Commerce is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this Part. |
| (4) 2 CFR 182.505 | § 1329.505 | Who in the Department of Commerce is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this Part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, Department of Commerce policies and procedures are the same as those in the OMB guidance.

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each Department of Commerce office from which it currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each Department of Commerce office from which it currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an

individual) of 2 CFR part 1329, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this Part?

The Secretary of Commerce or designee.

§ 1329.505 Who in the Department of Commerce determines that a recipient who is an individual violated the requirements of this Part?

The Secretary of Commerce or designee.

Subpart F—Definitions [Reserved]

Title 15, Commerce and Foreign Trade

PART 29—[REMOVED AND RESERVED]

2. Remove and reserve part 29.

[FR Doc. 2010–12536 Filed 5–24–10; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 26

[Docket No. OJP 1464; AG Order No. 3157–2010]

RIN 1121–AA76

Office of the Attorney General; Certification Process for State Capital Counsel Systems; Removal of Final Rule

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the USA PATRIOT Improvement and Reauthorization Act of 2005, the Department of Justice promulgated a

final rule to implement certification procedures for States seeking to qualify for the special Federal habeas corpus review procedures in capital cases afforded under chapter 154 of title 28 of the United States Code. *See Certification Process for State Capital Counsel Systems*, 73 FR 75327 (Dec. 11, 2008). A Federal district court issued an injunction requiring the Department to provide an additional public comment period and publish a response to any comments received during that period. The Department then solicited further public comments. By this proposed rule, the Department is proposing to remove the December 11, 2008 regulations. The Department will issue new regulations on this subject by separate rulemaking after the December 2008 regulations are removed.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before June 24, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue, NW., Room 4234, Washington, DC 20530. To ensure proper handling, please reference OAG Docket No. 1464 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Molly J. Moran, Office of Legal Policy, at (202) 514–4601 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

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

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

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

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The reason the Department is requesting electronic comments before Midnight Eastern Time on the day the comment period closes is that the inter-agency Regulations.gov/Federal Docket Management System (FDMS), which receives electronic comments, terminates the public’s ability to submit comments at Midnight on the day the comment period closes. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments, which will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

Overview

Chapter 154 of title 28, United States Code, makes special procedures available to a State respondent in Federal habeas corpus proceedings involving review of State capital convictions, but only if the Attorney General has certified “that [the] State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265,” and if “counsel was appointed

pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.” 28 U.S.C. 2261(b). 28 U.S.C. 2265(a)(1) provides that, in order for a State to qualify for the special habeas procedures, the Attorney General must determine that “the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent [capital] prisoners” and that the State “provides standards of competency for the appointment of counsel in [such proceedings].”

Chapter 154 has been in place since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132), but was amended by section 507 of Public Law 109–177, the USA PATRIOT Improvement and Reauthorization Act of 2005 (“the Act”). Prior to the Act, the determination of a State’s eligibility for the special habeas procedures had been left to the Federal habeas courts. The 2005 Act amended, *inter alia*, sections 2261(b) and 2265 of title 28 to assign responsibility for chapter 154 certifications to the Attorney General of the United States, subject to *de novo* review by the U.S. Court of Appeals for the District of Columbia Circuit.

Rulemaking History

Section 2265(b) directs the Attorney General to promulgate regulations to implement the certification procedure. To fulfill this mandate, the Department of Justice published a proposed rule in the **Federal Register** on June 6, 2007, that proposed adding a new subpart entitled “Certification Process for State Capital Counsel Systems” to 28 CFR part 26. 72 FR 31217 (June 6, 2007). The comment period ended on August 6, 2007. The Department published a notice on August 9, 2007, reopening the comment period, 72 FR 44816, and the reopened comment period ended on September 24, 2007. The final rule establishing the chapter 154 certification procedure was published on December 11, 2008, 73 FR 75327, with an effective date of January 12, 2009.

The U.S. District Court for the Northern District of California preliminarily enjoined the Department “during the pendency of these proceedings from putting into effect the rule * * * without first providing an additional comment period of at least thirty days and publishing a response to any comments received during such period.” *Habeas Corpus Res. Ctr. v. United States Dep’t of Justice*, No. 08–

2649, 2009 WL 185423, at *10 (Jan. 20, 2009). Further public comment was solicited, with the comment period closing on April 6, 2009. 74 FR 6131. The Department has reviewed, but has not yet published a response to, this latest round of public comments.

Review of Additional Comments

As the Department reviewed the submitted comments, it considered further the statutory requirements governing the regulatory implementation of the chapter 154 certification procedures. The Attorney General has determined that chapter 154 reasonably could be construed to allow the Attorney General greater discretion in making certification determinations than the December 11, 2008 regulations allowed. For instance, chapter 154 reasonably could be construed to permit the Attorney General to make certification determinations based on a minimum Federal standard of counsel competency, so long as that standard leaves the States sufficient discretion in establishing and applying their own counsel competency standards, and to certify only those State mechanisms that are adequate (including by providing sufficient compensation) to ensure the appointment of counsel who meet this Federal standard. In light of the availability of this discretion and concerns that the December 11, 2008 regulations unduly constrain it, the Attorney General has determined that those regulations should not bind him in making certification determinations pending the promulgation of a new rule.

Therefore, by this proposed rule, the Department is proposing to remove the December 11, 2008 regulations pending the completion of a new rulemaking process, during which the Department will further consider what certification procedures are appropriate.

Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866 Regulatory Planning and Review, § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. This proposed rule merely proposes to remove the December 11, 2008 regulations. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

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

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This proposed rule merely proposes to remove the December 11, 2008 regulations.

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 \$100,000,000 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.

List of Subjects in 28 CFR Part 26

Law enforcement officers, Prisoners.

Accordingly, for the reasons set forth in the preamble, part 26 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 26—DEATH SENTENCES PROCEDURES

1. The authority citation for part 26 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510, 2261, 2265.

Subpart B—[Removed and Reserved]

2. Subpart B is removed and reserved.

Dated: May 19, 2010.

Eric H. Holder, Jr.,
Attorney General.

[FR Doc. 2010-12535 Filed 5-24-10; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-B-1089]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before August 23, 2010.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1089, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make

determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows: