

# Rules and Regulations

Federal Register

Vol. 74, No. 135

Thursday, July 16, 2009

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## DEPARTMENT OF HOMELAND SECURITY

### 2 CFR Part 3000

### 44 CFR Part 17

[Docket No. DHS-2007-0006]

RIN 1601-AA46

### Department of Homeland Security Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

**AGENCY:** Department of Homeland Security (DHS).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is issuing this interim final rule to establish a new part 3000 on nonprocurement debarment and suspension in Title 2 of the Code of Federal Regulations (CFR). This new part is the Department's implementation of the Office of Management and Budget's (OMB) guidance on nonprocurement debarment and suspension. This rulemaking is consistent with OMB's initiative to streamline and consolidate Federal regulations, and brings all DHS components under a DHS-wide nonprocurement debarment and suspension system.

**DATES:** This interim final rule is effective August 17, 2009. Comments and related material must be received on or before August 17, 2009.

**ADDRESSES:** You may submit comments, identified by the docket number to this rulemaking, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Van Pace, Department of Homeland Security, 245 Murray Lane,

SW., Bldg. 410—Room 3514-11, Washington, DC 20528-0001.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, contact Van Pace, Office of Grant Policy and Oversight, Department of Homeland Security, at (202) 447-5269.

#### SUPPLEMENTARY INFORMATION:

#### I. Public Participation and Request for Comments

The Department of Homeland Security (DHS) encourages interested persons to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (DHS-2007-0006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means or mail at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. We will consider all comments and material received during the comment period. We may change this rule in view of them.

##### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (DHS-2007-0006) in the Search box, and click "Go >>." Individuals without Internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting DHS at the **FOR FURTHER INFORMATION CONTACT** information above.

#### C. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### II. Interim Final Rule

DHS is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), DHS finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

As described below in the Background and Purpose section, the Office of Management and Budget (OMB) has already conducted an extensive notice and comment process in the development of Federal Governmentwide final guidance on nonprocurement debarment and suspension, which DHS adopts without substantive change in this rulemaking. To conduct an additional notice and comment process would be unnecessary, redundant, wasteful of Federal resources, and cause needless delay of the regulatory streamlining initiative of which this rulemaking is a part.

#### III. Background and Purpose

Executive Order 12549, entitled *Debarment and Suspension*, which was signed on February 18, 1986 (3 CFR, 1986 Comp., p. 189, 51 FR 6370), provided that debarment or suspension of a participant in a program or activity involving Federal financial and nonfinancial assistance and benefits by one agency shall have Governmentwide effect. Executive Order 12549, section 1(a). The Executive Order did not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement,

or Federal employment. Executive Order 12549, section 1(c). Section 6 of the Executive Order authorized OMB to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by the Executive Order, prescribe Governmentwide criteria and Governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines. Section 3 directed agencies to issue implementing regulations that are consistent with OMB guidelines.

On February 21, 1986, OMB published proposed guidelines regarding the subjects in section 6 of Executive Order 12549 (51 FR 6370). The guidelines included draft regulations as a model to facilitate their use by the executive agencies when issuing the regulations required under section 3 of Executive Order 12549.

After considering 60 comments, OMB issued guidelines pursuant to Executive Order 12549, section 6, on May 29, 1987 (52 FR 20360). On May 26, 1988, 28 Federal agencies chose to comply with section 3 of the Executive Order by finalizing a common rule, and OMB revised its guidance to conform to the agencies' common rule. See 53 FR 19161. OMB has subsequently revised its guidance several times to conform it to Federal agencies' updates of the common rule.

On May 11, 2004, OMB established Title 2 of the CFR for grants and other financial assistance and nonprocurement agreements (69 FR 26276). Title 2 consists of two subtitles: Subtitle A, entitled *Governmentwide Guidance for Grants and Agreements*, contains OMB policy guidance to Federal agencies on grants and agreements; and Subtitle B, entitled *Federal Agency Regulations for Grants and Agreements*, contains Federal agencies' regulations implementing the OMB guidance in subtitle A.

Subtitle B of title 2 contains agency regulatory language that adopts the guidance and removes the common rule from its own title of the CFR (69 FR 26277). Thus, the full text of the Governmentwide policies will appear only once, in the OMB guidelines, and each agency's regulations will adopt those guidance documents identifying any agency-specific additions, exceptions or clarifications without repeating the full text. (69 FR 26277).

On August 31, 2005, OMB published policy guidance in 2 CFR subtitle A for Governmentwide nonprocurement debarment and suspension (70 FR 51862) to conform to the revised common rule adopted by 33 Federal

agencies on November 26, 2003 (68 FR 66534). For the first time, OMB also published the guidance in 2 CFR part 180 "in a form suitable for agency adoption," and explained that previous guidance "was not published anywhere [other than in the **Federal Register**], in full text \* \* \*." (70 FR 51864). As part of this new approach, OMB required each Federal agency to:

(1) Establish its chapter in Subtitle B of 2 CFR, consistent with the structure established for that title; (2) issue in that chapter of 2 CFR its brief rule adopting the OMB guidance and stating any additions, clarifications, or exceptions to the policies and procedures contained in the guidance; and (3) remove the November 2003 common rule from its own CFR title.

(70 FR 51865). On November 15, 2006, OMB published a final rule, revising its Governmentwide guidance with changes suggested by the Interagency Suspension and Debarment Committee (71 FR 66431).

#### IV. Discussion

In accordance with OMB's direction in the August 31, 2005 guidance (70 FR 51865), DHS is issuing this rule to adopt and implement the final guidance in 2 CFR part 180. This regulatory action implements OMB's initiative to streamline and consolidate all Federal regulations on nonprocurement debarment and suspension into one part of the CFR. It also provides a common rule applicable to all DHS components.

Pursuant to the same OMB direction, DHS is also removing subparts A, B, C, D, and E, and appendices A and B of 44 CFR part 17, which contains the Federal Emergency Management Agency's (FEMA) nonprocurement debarment and suspension rules. FEMA is the only DHS component with pre-existing agency-specific nonprocurement debarment and suspension rules. Under the provisions of this interim final rule, all of DHS will use DHS' nonprocurement debarment and suspension rules, thereby making those currently in 44 CFR part 17 obsolete.

The current FEMA nonprocurement debarment and suspension regulations in 44 CFR part 17 are essentially the same as the amended common rule adopted by 35 Federal agencies on June 26, 1995, and the conforming OMB guidance that issued on the same day (60 FR 33037). DHS is also making minor changes to the remainder of 44 CFR part 17 to remove or correct obsolete references and to remove the subpart F title *Drug-Free Workplace Requirements (Grants)*, and redesignate Appendix C as "Appendix".

Since 1995, federal agencies updated the common rule on November 26, 2003

(68 FR 66534), OMB conformed the interim final guidance to that updated common rule on August 31, 2005 (70 FR 51863), and, on November 15, 2006, OMB issued a final rule that incorporated "technical corrections suggested by the Interagency Suspension and Debarment committee (71 FR 66431). A description of the differences between the current FEMA regulations and this interim final rule is available in those changes to the 1995 common rule and guidance.

#### V. Regulatory Analyses

##### A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by OMB under that Order.

##### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt from these requirements, we have reviewed it for potential economic impact on small entities.

DHS does not believe that this rule will have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

##### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Van Pace, Office of Grant Policy and Oversight, Department of Homeland Security at (202) 447-5269. DHS will not retaliate against small entities that question or complain about this rule or any policy or action of DHS.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by DHS employees, call 1-888-REG-FAIR (1-888-734-3247).

#### D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Executive Order and have determined that it does not have implications for federalism.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1536) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### H. Civil Justice Reform

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.

#### I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### J. Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (NTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

This rulemaking concerns nonprocurement debarment and

suspension administrative procedures, and implements OMB's regulatory requirements in this area without substantive change. We have analyzed this interim final rule under Department of Homeland Security Management Directive 023-01 which guides DHS in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4365), and have concluded that this rule is part of a category of actions described in item A3 of Table 1 in Appendix A of the Management Directive. This interim final rule would not individually or cumulatively have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is necessary.

#### List of Subjects

##### 2 CFR Part 3000

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

##### 44 CFR Part 17

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, DHS amends Title 2 of the CFR and 44 CFR part 17 as follows:

#### Title 2—Grants and Agreements

■ 1. In subtitle B, add Chapter XXX, consisting of Part 3000, to read as follows:

##### Chapter XXX—Department of Homeland Security

#### PART 3000—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3000.10 What does this part do?

3000.20 Does this part apply to me?

3000.30 What policies and procedures must I follow?

##### Subpart A—General

3000.137 Who in the Department of Homeland Security may grant an exception to let an excluded person participate in a covered transaction?

##### Subpart B—Covered Transactions

3000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

##### Subpart C—Responsibilities of Participants Regarding Transactions

3000.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

### Subpart D—Responsibilities of Department of Homeland Security Officials Regarding Transactions

3000.437 What method do I use to communicate to a participant the requirements described in the Office of Management and Budget guidance at 2 CFR 180.435?

### Subpart E—[Reserved]

**Authority:** Sec. 2455, Public Law 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; Public Law 107–296, 116 Stat. 2135.

#### § 3000.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Homeland Security policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Homeland Security to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

#### § 3000.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR Part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a Department of Homeland Security suspension or debarment action;

(c) Department of Homeland Security debarment or suspension official;

(d) Department of Homeland Security grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

#### § 3000.30 What policies and procedures must I follow?

The Department of Homeland Security policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR Part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are

covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 3000.220). For any section of OMB guidance in Subparts A through I of 2 CFR Part 180 that has no corresponding section in this part, Department of Homeland Security policies and procedures are those in the OMB guidance.

### Subpart A—General

#### § 3000.137 Who in the Department of Homeland Security may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Homeland Security, the Secretary of Homeland Security has delegated the authority to grant an exception to let an excluded person participate in a covered transaction to the Head of the Contracting Activity for each DHS component as provided in the OMB guidance at 2 CFR 180.135.

### Subpart B—Covered Transactions

#### § 3000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Department of Homeland Security extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

### Subpart C—Responsibilities of Participants Regarding Transactions

#### § 3000.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to require the participant of that transaction to—

(a) Comply with Subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

### Subpart D—Responsibilities of Department of Homeland Security Officials Regarding Transactions

#### § 3000.437 What method do I use to communicate to a participant the requirements described in the Office of Management and Budget guidance at 2 CFR 180.435?

You as a DHS component official must include a term or condition in each covered transaction into which you

enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

### Subparts E—[Reserved]

## Title 44—Emergency Management and Assistance

### PART 17—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

■ 2. The authority citation for part 17 is revised to read as follows:

**Authority:** 41 U.S.C. 701 *et seq.*

■ 3. Revise the heading to part 17 to read as set forth above.

### Subparts A—E [Removed]

■ 4. In part 17, remove subparts A through E, consisting of §§ 17.100 through 17.510.

### §§ 17.600 through 17.635 [Amended]

■ 5. In part 17, remove the designation and subpart heading for Subpart F (currently consisting of §§ 17.600 through 17.635).

■ 6. In § 17.605—

■ a. Remove paragraph (a) and remove the paragraph (b) introductory text designation and the designations for paragraphs (b)(1) through (10) and arrange definitions in alphabetical order; and

■ b. Add definitions, in alphabetical order, for “Agency,” “Debarment,” “Person,” and “Suspension,” and revise the definition of “Employee” to read as follows:

#### § 17.605 Definitions.

\* \* \* \* \*

*Agency* means any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

\* \* \* \* \*

*Debarment* means action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is “debarred.”

\* \* \* \* \*

*Employee* means

(1) The employee of a grantee directly engaged in the performance of work under the grant, including:

- (i) All “direct charge” employees;
- (ii) All “indirect charge” employees, unless their impact or involvement is

insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

(2) This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

\* \* \* \* \*

*Person* means any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

\* \* \* \* \*

*Suspension* means an action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

#### § 17.610 [Amended]

■ 7. In § 17.610(c), remove the words "subparts A, B, C, D and E of this part", and add in their place the words "2 CFR part 3000"; and remove the words "this part", and add in their place the words "2 CFR part 3000".

#### § 17.615 [Amended]

■ 8. In § 17.615—

■ a. In paragraph (b)(1), remove the words "appendix C" and add, in their place, the word "appendix to part 17".

■ b. In paragraph (c)(1), remove the words "appendix C" and add, in their place, the word "appendix to part 17".

#### § 17.620 [Amended]

■ 9. In § 17.620—

■ a. In paragraph (a)(3), remove the words "this part", and add in their place the words "2 CFR part 3000".

■ b. In paragraph (b), remove the words "this part", and add in their place the words "2 CFR part 3000"; and remove the words "17.320(a)(2) of this part", and add in their place the words "2 CFR part 3000".

#### § 17.630 [Amended]

■ 10. In § 17.630(a)(1), remove the words "appendix C" and add, in their place, the word "appendix to part 17".

#### Appendix A to Part 17 [Removed]

■ 11. In part 17, remove Appendix A.

#### Appendix B to Part 17 [Removed]

■ 12. In part 17, remove Appendix B.

#### Appendix C to Part 17 [Redesignated as Appendix to Part 17]

■ 13. In part 17, redesignate Appendix C as Appendix to Part 17.

#### Van Pace,

Director, Office of Grant Policy & Oversight,  
Department of Homeland Security.

[FR Doc. E9-16429 Filed 7-15-09; 8:45 am]

BILLING CODE 9110-9B-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 3

[Docket ID OCC-2009-0007]

RIN 1557-AD25

#### Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital—Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program; Correcting Amendment

**AGENCY:** Office of the Comptroller of the Currency, Department of the Treasury.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This final rule reinstates regulatory text that was inadvertently removed during the issuance of an interim final rule.

**DATES:** *Effective Date:* July 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** On June 30, 2009, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision issued an interim final rule providing that mortgage loans modified under the Making Home Affordable Program (Program) will retain the risk weight assigned to the loan prior to the modification, so long as the loan

continues to meet other applicable prudential criteria.<sup>1</sup> Due to a drafting error, a portion of the OCC's existing capital rule was inadvertently removed. This rule reinstates this text.

#### Regulatory Analysis

##### *Administrative Procedure Act*

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act,<sup>2</sup> the OCC finds that there is good cause for issuing this final rule and making the rule effective immediately upon publication, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The rule merely reinstates text that was unintentionally removed.

##### *Riegle Community Development and Regulatory Improvement Act*

Section 302 of Riegle Community Development and Regulatory Improvement Act generally requires that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter unless the relevant agency finds good cause that the regulations should become effective sooner and publishes its finding with the rule.<sup>3</sup> This provision does not apply because this rule imposes no additional requirements.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this interim final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this interim final rule.

<sup>1</sup> 74 FR 31160 (June 30, 2009).

<sup>2</sup> 5 U.S.C. 553(b) and (d).

<sup>3</sup> 12 U.S.C. 4802(b)(1).