Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 535

[Docket ID. OTS–2008–0004]

RIN 1550–AC17

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 706

RIN 3133–AD47

Unfair or Deceptive Acts or Practices; Correction

AGENCIES: Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** on May 19, 2008, regarding Unfair or Deceptive Acts or Practices. This correction revises cross-references in OTS's and the NCUA's Paperwork Reduction Act (PRA) analysis.

FOR FURTHER INFORMATION CONTACT:

OTS: Ira L. Mills, Paperwork Clearance Officer, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments on the collection of information should be addressed to: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.*

NCUA: Jeryl Fish, Paperwork Clearance Officer, or Tracy Sumpter, Computer Information Assistant, (703) 518–6440, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Comments on the collection of information should be addressed to: Jeryl Fish, Paperwork Clearance Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428; send a facsimile to (703) 518–6319; or send an e-mail to *regcomments@ncua.gov.*

Correction

In proposed rule FR Doc. E8–10247, beginning on page 28904 in the issue of May 19, 2008, make the following correction to the **SUPPLEMENTARY INFORMATION** section. On page 28937 in the third column, first paragraph, revise the fifth sentence to read: ''The requirements are found in 12 CFR 535.13, 535.28, 535.32, 706.13, 706.28, and 706.32.''

Dated: May 28, 2008.

By the Office of Thrift Supervision,

Deborah Dakin,

Senior Deputy Chief Counsel.

By the National Credit Union Administration Board, on May 27, 2008.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E8–12359 Filed 6–2–08; 8:45 am]

BILLING CODE 6720–01–P (50%); 7535–01–P (50%)

DEPARTMENT OF JUSTICE

28 CFR Part 100

[Docket No. FBI 119]

CALEA Cost Recovery Regulations; Section 610 Review

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Notice of a section 610 review and request for comments.

SUMMARY: This document summarizes the results of a review of the CALEA Cost Recovery Regulations, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before August 4, 2008.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. FBI 119'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to CALEA Implementation Unit, Technical Programs Section, Engineering Research Facility, Building 27958A, Quantico, Virginia. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. FBI will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. FBI will not accept any file formats other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: CALEA Implementation Unit, Technical Programs Section, Engineering Research Facility, Building 27958A, Quantico, Virginia, (703) 632–6897.

SUPPLEMENTARY INFORMATION:

I. 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* and are maintained in the public docket regarding this matter. 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 or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket 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 or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also 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 online or made available in the public docket.

Personal identifying information and confidential business information

identified and located as set forth above will be redacted and posted online and placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

II. Overview

The Communications Assistance for Law Enforcement Act (CALEA), codified at 47 U.S.C. 1001–1010, is an important statute. CALEA was enacted in 1994 to preserve the Government's ability, pursuant to court order or other lawful authorization, to intercept communications and related information involving advanced technologies, while protecting the privacy of communications and without impeding the introduction of new technologies, features, and services. CALEA requires telecommunications carriers to ensure that their telecommunications equipment is, among other things, capable of enabling the lawfully authorized interception of communications by the government.

The law under CALEA treats telecommunications equipment deployed on or before January 1, 1995 differently from equipment deployed after 1995. With regard to pre-1995 telecommunications equipment, CALEA provides that the carrier may request the Attorney General to provide reimbursement for certain costs associated with modifications necessary to render the equipment compliant with CALEA's surveillance assistance capability requirements. If the Attorney General chooses in his discretion not to make such reimbursement, then CALEA provides that the equipment shall be ''considered to be in compliance'' until it is modified, replaced or significantly upgraded. 47 U.S.C. 1008(d). Under certain limited circumstances, described further herein, the payment of costs associated with post-1995 equipment might also be authorized. *See* 47 U.S.C. 1008(b)(2)(A).

The FBI, as the authorized delegate of the Attorney General under CALEA, adopted the CALEA Cost Recovery Regulations which are published at 28 CFR 100.9, et seq. The regulations were adopted by a final rule and published in the **Federal Register** on March 20, 1997 (62 FR 13324). The FBI uses these regulations in appropriate cases to govern the submission of claims (and accompanying information) by telecommunications carriers under CALEA, and, as is further required by CALEA Section 109(c), to allocate appropriated funds ''in accordance with law enforcement priorities.'' *See* 47 U.S.C. 1008(c).

The CALEA Cost Recovery Regulations are accounting and procedural rules. The Regulations specify certain requirements for submission of cost recovery claims under CALEA. The Cost Recovery Regulations specify in detail the types of costs that could be authorized for reimbursement (28 CFR 100.11), how such costs should be documented (§ 100.16), and the process by which a claim could be evaluated or audited (§ § 100.18, 100.19).

In the FBI's experience, many of the costs eligible for reimbursement were paid through ''Nationwide Right-To-Use (RTU) Software License Agreements.'' Through this program, administered by the FBI, several major telecommunications equipment manufacturers contracted to produce CALEA-compliant software upgrades and make them available to telecommunications carriers without additional charge.

As discussed in this Notice, the FBI finds that the Cost Recovery Regulations probably do not have a ''significant impact on a substantial number of small entities.'' We have, however, undertaken the review herein pursuant to Section 610 to determine whether the Cost Recovery Regulations should be continued without change, amended, or rescinded (consistent with the objectives of CALEA) to minimize the impacts on small entities. The Cost Recovery provisions serve an important purpose by governing the submission of cost recovery claims under CALEA. Other methods of cost recovery have been utilized by the FBI under CALEA, as explained herein, but the procedures set forth in the Cost Recovery Regulations provide another valid method.

The CALEA Cost Recovery Regulations have been established in such a way as to protect the carrier against incurring any additional costs that will not be reimbursed. For example, prior to signing an agreement, all costs that the government is willing to reimburse are documented and their estimated amounts are agreed to. The CALEA Cost Recovery Regulations have no analogue under State laws. There is no state equivalent to the requirements of CALEA.

The FBI has not received any complaints or expressions of concern regarding the regulations from the public since the time the regulations were adopted by the FBI. The regulations do not conflict with or duplicate other Federal rules. The FBI therefore has determined that the CALEA Cost Recovery Regulations should be continued without change.

III. Section 610 Review of the CALEA Cost Recovery Regulations

A. Purpose of the Review

This review is being conducted under section 610 of the Regulatory Flexibility Act (RFA). The DOJ published in the **Federal Register** (64 FR 54794–01; October 8, 1999), its plan to review certain regulations, including CALEA Cost Recovery Regulations, under criteria contained in section 610 of the RFA 5 U.S.C. 601–612. After consideration, we believe that the CALEA Cost Recovery Regulations set forth procedural requirements only and that they likely do not have a ''significant economic impact upon a substantial number of small entities.'' Nevertheless, the FBI has conducted a review pursuant to the criteria under section 610.

The purpose of the review is to determine whether the CALEA Cost Recovery Regulations should be continued without change, amended, or rescinded (consistent with the objectives of CALEA) to minimize the impacts on small entities. In conducting this review, we considered the following factors: (1) The continued need for the regulations; (2) the nature of complaints or comments received from the public concerning the regulations; (3) the complexity of the regulations; (4) the extent to which the regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the regulations have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulations.

B. 1. Background Regarding CALEA

The Communications Assistance for Law Enforcement Act (CALEA), codified at 47 U.S.C. 1001–1010, is an important statute and sets forth requirements that are critically important to federal, state and local law enforcement agencies. It was enacted in 1994 to preserve the Government's ability, pursuant to court order or other lawful authorization, to intercept communications and related information involving advanced technologies, while protecting the privacy of communications and without impeding the introduction of new technologies, features, and services. CALEA generally requires telecommunications carriers to ensure that their telecommunications equipment is, among other things, capable of enabling the lawfully authorized interception of

communications by the government. *See* 47 U.S.C. 1002(a)(1)–(4).

CALEA divides telecommunications equipment generally into two classes. The first class includes equipment, facilities and services installed or deployed on or before January 1, 1995. The second class includes all other equipment, facilities and services installed or deployed after January 1, 1995. With regard to pre-1995 equipment, the law provides that the carrier may request the Attorney General to agree to pay reimbursement for certain costs associated with reasonable modifications necessary to ensure that it is compliant with CALEA's surveillance assistance capability requirements set forth in 47 U.S.C. 1002(a)(1)–(4). If the Attorney General chooses in his discretion not to make such reimbursement, then CALEA further provides that the equipment shall be ''considered to be in compliance'' until it is modified, replaced or significantly upgraded. 47 U.S.C. 1008(d). This provision essentially accords ''grand-father'' protection to pre-1995 equipment.

Post-1995 equipment is generally required to be fully compliant with CALEA without any such cost reimbursement. Under certain very limited circumstances, however, the reimbursement of such costs may be authorized if the Federal Communications Commission (FCC) makes a formal determination that compliance by a carrier is ''not reasonably achievable.'' *See* 47 U.S.C. 1008(b)(2)(A). The circumstances under which such determinations might be made by the FCC are quite limited. As the FCC has noted, this provision ''imposes a high burden of proof for telecommunications carriers to demonstrate that they made reasonable efforts to develop CALEA solutions and that none of them are reasonably achievable.'' *See* Communications Assistance for Law Enforcement Act and Broadband Access and Services, Second Report and Order, ET Docket No. 04–295, RM–10865, 21 FCC Rcd 5360 ¶ 30 (2006). Thus, while the law provides that some cost reimbursement could potentially be authorized under CALEA for post-1995 equipment; such circumstances would likely be rare.

B. 2. The CALEA Cost Recovery Regulations

In order to control any payment of costs under the provisions described above, CALEA further directs the Attorney General to ''establish regulations necessary to effectuate timely and cost-efficient payment to telecommunications carriers under this title.'' 47 U.S.C. 1008(e). CALEA contains specific directives for the Attorney General to follow in adopting these regulations. Sections 1008(e)(2)(A) through (C) of Title 47, United States Code provides:

(2) CONTENTS OF REGULATIONS—The Attorney General, after consultation with the Commission, shall prescribe regulations for purposes of determining reasonable costs under this title. Such regulations shall seek to minimize the cost to the Federal Government and shall—

(A) Permit recovery from the Federal Government of—

(i) The direct costs of developing the modifications described in subsection (a), of providing the capabilities requested under subsection (b)(2), or of providing the capacities requested under section 104(e), but only to the extent that such costs have not been recovered from any other governmental or non-governmental entity;

(ii) The costs of training personnel in the use of such capabilities or capacities; and

(iii) The direct costs of deploying or installing such capabilities or capacities;

(B) In the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a law enforcement agency of a government, permit recovery of only the incremental cost of making the modification suitable for such law enforcement purposes; and

(C) Maintain the confidentiality of trade secrets.

In addition, the regulations must include a requirement that claims for cost reimbursement will ''contain[] or [be] accompanied by such information as the Attorney General may require. * * *'' *Id.* § 1008(e)(3).

The FBI Director is the authorized delegate of the Attorney General under CALEA. 28 CFR 0.85(o). The FBI therefore adopted the ''CALEA Cost Recovery Regulations'' as required by the statute. The Cost Recovery Regulations were adopted by a final rule and published in the **Federal Register** on March 20, 1997 at 62 FR13324, and are now codified at 28 CFR 100.9, *et seq*. The FBI relies on these regulations in appropriate cases to govern the submission of claims and accompanying information by telecommunications carriers. Information accompanying such claims is used by the FBI in part to decide whether payment would be appropriate, after considering the nature and amount of the claim, the benefit to law enforcement, and other factors. The FBI allocates any funds appropriated under CALEA ''in accordance with law enforcement priorities'' as required by CALEA. 47 U.S.C. 1008(c).

The CALEA Cost Recovery Regulations, in general, consist of a set of special accounting rules pertaining to costs eligible for reimbursement under CALEA. These Regulations were adopted pursuant to the requirements of CALEA, and meet the requirements set forth in CALEA, 47 U.S.C. 1008(e)(2)(A)–(C). Each section of the Cost Recovery Regulations addresses a different procedural requirement for carriers seeking to submit a valid claim for reimbursement, including: Definitions, Allowable Costs, Reasonable Costs, Directly Assignable Costs, Directly Allocable Costs, Disallowed Costs, Cost Estimate Submission, Request for Payment, Audit, Adjustments to Agreement Estimate, Confidentiality of Trade Secrets/Proprietary Information, and Alternative Dispute Resolution.

As discussed above, CALEA provides for submissions of claims by carriers for cost reimbursement with regard to pre-1995 equipment, and to a much more limited extent, certain post-1995 equipment under circumstances where the FCC makes a determination that compliance is ''not reasonably achievable.'' If a carrier chooses to request reimbursement of eligible costs under CALEA, then it must submit a claim in accordance with the Regulations. Of course, a carrier is only required to comply with the Cost Recovery Regulations to the extent that it chooses to seek cost reimbursement. If, for whatever reason, an eligible carrier chooses not to seek any reimbursement, but rather to comply with CALEA and recover any costs through other means, then such a carrier would not need to submit a claim under the Regulations. A carrier submitting a claim must demonstrate in accordance with the Cost Recovery Regulations that the expenses were incurred and that they are potential eligible for reimbursement, among other things. The FBI then uses the information provided to evaluate various factors in order to determine whether or not to exercise its discretion to pay the claim.

In addition to payment of certain eligible costs in accordance with the Regulations as described above, the FBI is further authorized at its option to make certain payments of eligible costs under CALEA to telecommunications carriers and equipment manufacturers pursuant to ''firm fixed-price agreements.'' See Public Law 106–246, Div. B, Title II, July 13, 2000, 114 Stat. 542. The FBI made two agreements under the firm-fixed price option, after determining that the prices were reasonable, based on allowable costs, and supported by sufficient documentation.

C. FBI's Experience With the Cost Recovery Regulations

After CALEA was enacted in 1994, the FBI, over several years, successfully pursued a CALEA implementation strategy whereby it pursued agreements with major telecommunications equipment manufacturers to develop CALEA-compliant software upgrades for the majority of the types of telecommunications equipment already deployed throughout the United States. The agreements resulted in the manufacturing of the software upgrades, along with a ''Nationwide Right-To-Use (RTU) Software License'' granting any telecommunications carrier the right to install and use the software free of charge. These agreements ensured the ready availability of CALEA-compliant software upgrades for a significant amount of pre-1995 telecommunications equipment. The FBI made such agreements with AG Communications Systems, Lucent Technologies, Motorola, Nortel Networks, and Siemens AG. When considered in total, these agreements resulted in software upgrade solutions being made available for the vast majority (over 85 percent) of pre-1995 telecommunications equipment. Because the software is available free of charge, costs to telecommunications carriers were significantly reduced. Consequently, the need for carriers to seek reimbursement for costs associated with modifying pre-1995 equipment to comply with CALEA, and also to comply with the Cost Recovery Regulations, was likewise significantly reduced. The agreements did not entirely cover all potentially reimbursable costs associated with each carrier's compliance. In particular, some carriers incurred some costs in the installation of the free-of-charge software solutions on pre-1995 equipment.

In the FBI's experience to date, it has received and processed a total of 84 claims submitted in accordance with the CALEA Cost Recovery Regulations. Many of these claims were submitted seeking FBI approval for interim ''progress payments'' issued pursuant to the comprehensive RTU agreements described above. Only three claims were submitted by small entity carriers and these sought a total reimbursement of $24,000.

D. Economic Impact of the Cost Recovery Regulations on Small Entities

Section 610 of the RFA requires each agency to plan for the periodic review of any rules issued by the agency ''which have or will have a significant economic impact upon a substantial number of small entities.'' 5 U.S.C. 610(a). The FBI estimates that over 5,000 telecommunications carrier entities are engaged in providing communications services and would be subject to CALEA's requirements. We further estimate that about 90 percent of these companies would be considered small businesses under criteria established by the Small Business Administration (13 CFR 121.601). Both large and small carriers, if they were to submit claims for cost recovery under CALEA, must comply with the same Cost Recovery Regulations.

After considering all of the available facts, and its experience since publication of the 1997 final CALEA Cost Recovery Regulations, the FBI finds that the Cost Recovery Regulations likely do not have a ''significant economic impact upon a substantial number of small entities.'' Several reasons support this conclusion.

First, as described above, only a limited class of telecommunications equipment is even eligible for cost reimbursement under CALEA, and most of that equipment was installed before 1995. Since it has been over 10 years since CALEA's enactment, a significant portion of this equipment has already been upgraded or replaced. Second, and more significantly, however, the FBI's implementation strategy after CALEA's enactment greatly reduced the costs associated with CALEA compliance with regard to pre-1995 equipment. By contracting with major equipment manufacturers to produce CALEA-compliant software upgrades available free-of-charge to carriers, the costs incurred through compliance with CALEA were greatly reduced for a majority of carriers. This action necessarily reduced the potential number of claims for cost recovery, and hence, the number of entities potentially required to comply with the Cost Recovery Regulations. The fact that this reduction occurred is evidenced by the relatively low number of claims (84) that the FBI has processed under CALEA to date, and very few claims (3) having been submitted by small entities to date. It is very likely therefore that the Regulations have no effect at all on a substantial number of small entities.

Moreover, even in cases where a small entity does submit a claim, the Cost Recovery Regulations would not likely have any ''significant economic impact'' on that entity. As described above, the Regulations are procedural. They require an entity to support and document its monetary claim with records evidencing the accuracy of the claimed costs, and demonstrating that such costs are eligible for repayment under CALEA. In general, an entity providing this information would be required to reference and provide copies its own business records, and to summarize information that is readily available from its own business records. At most, it might be necessary for a carrier to seek the assistance of an employee or contractor with financial expertise in order to comply with the Regulations. This type financial accounting activity occasioned by compliance with the Cost Recovery Regulations is common in many businesses. This activity is very unlikely to create a ''significant economic impact'' on any small entity.

As stated above however, notwithstanding this conclusion the FBI has proceeded to consider the factors specified for review in Section 610(b) of the RFA.

D. 1. The Continued Need for for the Regulations

As discussed herein, the purpose of the CALEA Cost Recovery Regulations is to implement the requirements of CALEA related to costs. *See generally* 47 U.S.C. 1008. CALEA specifically required the Attorney General to establish regulations setting forth the procedures that telecommunications carriers must follow in order to request and be considered for reimbursement for the costs of modifications to pre-1995 equipment, and any other eligible costs. *Id.* at section 1008(e)(1). In addition, in order to facilitate CALEA's implementation, Congress authorized $500 million to be appropriated to reimburse the telecommunications industry for certain eligible costs associated with CALEA compliance.

The majority of the funds appropriated under CALEA, have been applied in the ''Nationwide Right-To-Use (RTU) Software License'' strategy described above, which covered a majority of the eligible of costs associated with upgrading pre-1995 telecommunications equipment in order to comply with CALEA's requirements. As stated herein, these arrangements allowed the FBI paid for the development of CALEA software solutions for certain high priority switching platforms, and allowed all carriers to receive CALEA-compliant software at no charge. The arrangements did not, however, cover certain additional, and potentially reimbursable, costs associated with each carrier's compliance. In particular, some carriers would still incur costs in the deployment and activation of the software solutions on pre-1995 equipment. The FBI continues to hold discussion with carriers to determine

whether it is appropriate to consider agreeing to reimbursement of these or other costs, subject to the level of remaining appropriated funds and the limitations specified in CALEA. Despite some reductions in the level of appropriated funding, these discussions create a continuing need for the CALEA Cost Recovery Regulations. In addition, as is also described above, the FBI might in its discretion, and within the very limited circumstances of an FCC decision that compliance by a particular entity is ''not reasonably achievable,'' agree to pay certain eligible other costs. Payments in these situations might also require the entity to submit a claim in accordance with the Cost Recovery Regulations. For these reasons, there is a continued need for the Regulations.

D. 2. The Nature of Complaints or Comments Received From the Public Concerning the Regulations

The FBI has processed 84 claims for reimbursement to date. Each of these claims was paid, and required only minor adjustments to the amount claimed. No complaints have been received by the FBI regarding the Cost Recovery Regulations. In those few cases where the FBI required additional information beyond the information initially submitted by the entity with the claim, the FBI's questions were answered satisfactorily and reimbursement was made.

There have been no instances since the adoption of the Regulations where an entity has expressed to the FBI any difficulties in its compliance with the Regulations. In fact, in many cases, carriers expressed satisfaction that they had received proper reimbursement for the costs they had incurred. In addition, some carriers found the Regulations to be useful, because the process allowed the entity to proceed with CALEA-related modifications while after receiving assurance from the FBI that eligible costs would be reimbursed. The Regulations thus serve as a helpful tool that provide carriers and other entities with guidance as to how to verify the eligibility of compliance costs for reimbursement before such costs are actually incurred.

Additionally, as described above, the FBI is also authorized to use an alternate procedure authorized in, whereby the FBI may agree to a to firm fixed-price arrangement with a carrier, manufacturer or other entity. *See* Public Law 106–246, Div. B, Title II, July 13, 2000, 114 Stat. 542. This alternative provides flexibility for cases where a firm-fixed price is appropriate, and has been used by the FBI in two arrangements.

The FBI also considered whether any changes that could be made to improve the cost-reimbursement process. Based on the flexibility inherent in the Regulations themselves and the firm-fixed price strategy, and also on the success of the Regulations to date, the FBI determined that no changes are necessary.

D. 3. The Complexity of the Regulations

The CALEA Cost Recovery Regulations are roughly similar in complexity to other existing cost-accounting regulations imposed by the Federal government, including for example, the Federal Acquisition Regulations. Based upon our review, the Regulations do not appear to be excessively complex. In the FBI's experience, all of the entities submitting claims in accordance with the Regulations have successfully complied with minimal assistance from the FBI.

D. 4. The Extent to Which the Regulations Overlap, Duplicate, or Conflict With Other Federal Rules and to the Extent Feasible With State and Local Government Rules

No other Federal or State regulations overlap, duplicate or conflict with the CALEA Cost Recovery Regulations. This is because the FBI, as the authorized delegate of the Attorney General, is the only Federal or State agency with the authority and responsibility for implementing the cost recovery provisions of CALEA. As described above, there is no analogue to CALEA under State law.

D. 5. The Length of Time Since the Regulations Have Been Evaluated or the Degree to Which Technology, Economic Conditions, or Other Factors Have Changed in the Area Affected by the Regulations

The Regulations were evaluated in some respect in 2000, when it was determined that it would be beneficial to add flexibility by providing the government with the discretion to make firm fixed-price agreements in certain cases. The FBI has re-evaluated the Regulations pursuant to this inquiry. Technology, economic conditions, and other factors have changed in the telecommunications area affected by the Regulations since the time when they were adopted. For example, the wide deployment by carriers of new technologies, such as broadband internet access and Voice-Over-Internet-Protocol, has led the FCC to adopt new rules for CALEA-compliance. *See In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005). These changes however have no impact on the requirements for the Cost Recovery Regulations, since the Regulations are based on accounting concepts which are essentially neutral as to technology, economic conditions, or other factors. For example, the application of the definition of ''reasonable costs'' found in 28 CFR 100.12(a) (''A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of a competitive business.'') would be the same without regard to the technology utilized by the entity incurring the cost. This is the case for all of the Cost Recovery Regulations. For these reasons the FBI has determined that no changes are necessary at this time to the Cost Recovery Regulations.

E. Conclusion

For the reasons discussed herein, the FBI concludes that the CALEA Cost Recovery Regulations do not have a significant economic impact upon a substantial number of small entities. The FBI further concludes after consideration of the criteria set forth in the Regulatory Flexibility Act, Section 610(b), Title 5, United States Code, that the Regulations should be maintained in their current status, without changes.

Dated: April 10, 2008.

Marybeth Paglino,

Unit Chief, Federal Bureau of Investigation, CALEA Implementation Unit.

[FR Doc. E8–12399 Filed 6–2–08; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0121]

RIN 1625–AA11

''McCormick & Baxter'' Regulated Navigation Area, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area on the Willamette River, Portland Oregon Captain of the Port Zone. This action is necessary to preserve the integrity of the engineered pilot cap placed over contaminated sediments as part of an Environmental Protection