

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Parts 260 and 284**

[Docket Nos. RM07–10–000 and AD06–11–000]

**Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act; Notice of Extension of Time**

May 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.**ACTION:** Notice of Proposed Rulemaking; extension of comment period.

**SUMMARY:** On April 19, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR) revising its regulations in order to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce. The dates for filing initial and reply comments on the NOPR are being extended at the request of the Texas Pipeline Association.

**DATES:** Comments are due on or before July 11, 2007. Reply comments are due on or before August 9, 2007.

**ADDRESSES:** You may submit comments identified by Docket No. RM07–10–000, by one of the following methods:

- *Agency Web Site:* <http://ferc.gov>.

Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

**FOR FURTHER INFORMATION CONTACT:**

Stephen J. Harvey (Technical), 888 First Street, NE., Washington, DC 20426, (202) 502–6372, [Stephen.Harvey@ferc.gov](mailto:Stephen.Harvey@ferc.gov).

Eric Ciccoretti (Legal), 888 First Street, NE., Washington, DC 20426, (202) 502–8493, [Eric.Ciccoretti@ferc.gov](mailto:Eric.Ciccoretti@ferc.gov).

**SUPPLEMENTARY INFORMATION:** On May 25, 2007, the Texas Gas Pipeline Association (TPA) filed a motion for an extension of time to file initial and reply comments in response to the Notice of Proposed Rulemaking (NOPR) issued April 19, 2007, in the above-referenced proceeding. 72 FR 20791 (Apr. 26, 2007), FERC. Stats. and Regs. ¶ 32,614

(2007). The motion states that TPA and its members require additional time in order to fully consider the implications of the NOPR, to prepare meaningful comments and to develop material for the record to respond to the numerous requests for specific information in the NOPR.

Upon consideration, notice is hereby given that an extension of time for filing initial comments on the NOPR is granted to and including July 11, 2007. Reply comments should be filed on or before August 9, 2007.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E7–10803 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P****DEPARTMENT OF JUSTICE****28 CFR Part 26**

[Docket No. OJP (DOJ)–1464; AG Order No. 2881–2007]

**RIN 1121–AA74****Office of the Attorney General; Certification Process for State Capital Counsel Systems****AGENCY:** Office of the Attorney General, Department of Justice.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The USA PATRIOT Improvement and Reauthorization Act of 2005 instructs the Attorney General to promulgate regulations to implement certification procedures for States seeking to qualify for the expedited Federal habeas corpus review procedures in capital cases under chapter 154 of Title 28, United States Code. The procedural benefits of chapter 154 are available to States that establish a mechanism for providing counsel to indigent capital defendants in State postconviction proceedings that satisfies certain statutory requirements. This proposed rule would carry out the Act's requirement of issuing regulations for the certification procedure.

**DATES:** *Comment date:* Comments must be submitted on or before August 6, 2007.

**ADDRESSES:** Please address all comments regarding these proposed regulations, by U.S. mail, to: Kim Ball Norris, Senior Policy Advisor for Adjudication, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531; by telefacsimile (fax), to: (202) 307–0036 or by e-mail, to: [OJP\\_Fed\\_Reg\\_Comments@usdoj.gov](mailto:OJP_Fed_Reg_Comments@usdoj.gov). To

ensure proper handling, please reference OJP Docket No. 1464 on your correspondence. You may view an electronic version of this proposed rule at [www.regulations.gov](http://www.regulations.gov), and you may also comment by using the [www.regulations.gov](http://www.regulations.gov) comment form for this regulation. When submitting comments electronically you must include OJP Docket No. 1464 in the subject box.

**SUPPLEMENTARY INFORMATION:** Public Law 109–177, the USA PATRIOT Improvement and Reauthorization Act of 2005, (“the Act”) was signed into law on March 9, 2006. Section 507 of that Act amends chapter 154 of Title 28 of the United States Code. Chapter 154 offers procedural benefits in Federal habeas corpus review to States that go beyond the constitutional requirement of appointing counsel for indigents at trial and on appeal by providing counsel also to capital defendants in State postconviction proceedings. The chapter 154 procedures include special provisions relating to stays of execution (28 U.S.C. 2262), the time for filing Federal habeas corpus applications (28 U.S.C. 2263), the scope of Federal habeas corpus review (28 U.S.C. 2264), and time limits for Federal district courts and courts of appeals to determine habeas corpus applications and related appeals (28 U.S.C. 2266). See 152 Cong. Rec. S1620, S1624–28 (daily ed., Mar. 2, 2006) (remarks of Sen. Kyl) (explanation of procedural benefits to States under chapter 154); 141 Cong. Rec. S4590, S4590–92 (daily ed., Mar. 24, 1995) (remarks of Sen. Specter) (explaining the historical problem of capital habeas delay motivating the enactment of habeas reforms).

Although chapter 154 has been in place since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132), the determination that a State was eligible for the procedural benefits of chapter 154 had been left to the Federal court of appeals for the circuit in which the State is located. The Act amended sections 2261(b) and 2265 of title 28 to assign responsibility for chapter 154 certification to the Attorney General of the United States, subject to review by the Court of Appeals for the District of Columbia Circuit. Section 2265(a) as amended makes clear that the only requirements that the Attorney General may impose for a State to receive certification are those expressly stated in chapter 154. See 28 U.S.C. 2265(a)(3)

( “[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter”). It also provides that the date on which a State established the mechanism that qualifies it for certification is the effective date of the certification. See 28 U.S.C. 2265(a)(2).

In addition to the changes affecting certification, the Act amends section 2261(d) to permit the same counsel that has represented a prisoner on direct appeal to represent the prisoner in postconviction proceedings without limitation, and it amends section 2266(b)(1)(A) to extend the time for a district court to rule on a chapter 154 petition from 180 days to 450 days.

Section 2265(b) directs the Attorney General to promulgate regulations to implement the certification procedure. The Department consulted with a number of groups in developing this proposed rule to carry out the statutory directive, including representatives of State officials and both prosecution and defense interests concerned with capital case litigation. The consultations covered a broad range of issues affecting the implementation of the certification procedure, including the State officials who should be responsible for requesting certification, the requirements for certification, and the procedure for requesting certification. The proposed rule would add a new subpart entitled “Certification Process for State Capital Counsel Systems” to 28 CFR part 26.

### Section by Section Analysis

#### Section 26.20

Section 26.20 explains the rule’s purpose to implement the certification procedure for chapter 154.

#### Section 26.21

Section 26.21 provides definitions for certain terms used in chapter 154 and the regulations. Under 28 U.S.C. 2265(a), a certification request must be made by “an appropriate State official.” Pursuant to paragraph (a) of this section of the proposed rule, in most cases, that official will be the State Attorney General. In those few States, however, where the State Attorney General does not have responsibilities relating to Federal habeas corpus litigation, the Chief Executive of the State will be considered the appropriate State official to make a submission on behalf of the State.

Paragraph (b) defines “State postconviction proceedings” as referring to State collateral proceedings, which normally occur following the

completion of direct review. However, in relation to States with unitary review systems for capital cases involving concurrent direct and collateral review, the term also encompasses the collateral review aspect of the unitary review process. Formerly separate provisions for the application of chapter 154 in States with unitary review systems under the original version of 28 U.S.C. 2265 were eliminated by the recent amendments in favor of the current provisions, which are worded broadly enough to permit chapter 154 certification both for States with bifurcated direct and collateral review systems and for States with unitary review systems. Compare current 28 U.S.C. 2261(b) and 2265 with former 28 U.S.C. 2261(b) and 2265.

The definition of “State postconviction proceedings” in the proposed rule reflects the underlying objective of chapter 154 to provide expedited Federal habeas corpus review in capital cases arising in States that have gone beyond the constitutional requirement of appointing counsel for indigents at trial and on appeal by extending the appointment of counsel to indigent capital defendants in State collateral proceedings. The provisions of chapter 154, as well as the relevant legislative history, reflect the understanding of “postconviction proceedings” as not encompassing all proceedings that occur after conviction (e.g., sentencing proceedings, direct review), but rather as referring to collateral proceedings. See 28 U.S.C. 2261(e) (stipulating that ineffectiveness or incompetence of counsel during postconviction proceedings in a capital case cannot be a ground for relief in a Federal habeas corpus proceeding); 28 U.S.C. 2263(a), (b)(2) (180-day time limit for Federal habeas filing under chapter 154 starts to run “after final State court affirmation of the conviction and sentence on direct review or the expiration of the time for seeking such review” subject to tolling “from the date on which the first petition for postconviction review or other collateral relief is filed until the final State court disposition of such petition”); 152 Cong. Rec. S1620, S1624–25 (Mar. 2, 2006) (remarks of Sen. Kyl) (explaining that chapter 154 provides incentives for States to provide counsel in State postconviction proceedings, equated to collateral proceedings); 151 Cong. Rec. E2639–40 (daily ed., Dec. 14, 2005) (extension of remarks of Rep. Flake) (same understanding); see also, e.g., *Murray v. Giarratano*, 492 U.S. 1 (1989) (equating postconviction and collateral proceedings).

#### Section 26.22

Section 26.22 sets out the requirements for certification that a State must meet to qualify for the application of chapter 154. These are the requirements expressly set forth in 28 U.S.C. 2261(c)-(d) and 2265(a)(1). With respect to each of the requirements, examples are provided in the text of mechanisms that would be deemed sufficient or, in some cases, insufficient to comply with the chapter. The examples given of qualifying mechanisms are illustrative and therefore do not preclude States with other mechanisms for providing counsel in postconviction proceedings from meeting the requirements for certification.

#### Section 26.23

Section 26.23 sets out the mechanics of the certification process for States seeking to opt in to chapter 154.

### 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, section 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. It provides only a framework for those States that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the U.S. Code. 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 rule provides only a framework for those States that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the United States Code.

#### *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 heading for part 26 is revised as set forth above.

2. The authority citation for part 26 is revised 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.

3. Sections 26.1 through 26.5 are designated as Subpart A and a new subpart heading is added to read as follows:

#### **Subpart A—Implementation of Death Sentences in Federal Cases**

4. Part 26 is amended by adding at the end thereof the following new Subpart B to read as follows:

#### **Subpart B—Certification Process for State Capital Counsel Systems**

Sec.	
26.20	Purpose.
26.21	Definitions.
26.22	Requirements.
26.23	Certification process

#### **§ 26.20 Purpose.**

Sections 2261(b)(1) and 2265(a) of title 28 of the United States Code require the Attorney General to certify whether a State has a mechanism for providing legal representation to indigent prisoners in State postconviction proceedings in capital cases that satisfies the requirements of chapter 154 of title 28. If certification is

granted, sections 2262, 2263, 2264, and 2266 of chapter 154 of the U.S. Code apply in relation to Federal habeas corpus review of capital cases from the State. Subsection (b) of 28 U.S.C. 2265 directs the Attorney General to promulgate regulations to implement the certification procedure under subsection (a) of that section.

#### **§ 26.21 Definitions.**

For purposes of this part, the term—  
*Appropriate State official* means the State Attorney General, except that, in a State in which the State Attorney General does not have responsibility for Federal habeas corpus litigation, it means the Chief Executive thereof.

*State postconviction proceedings* means collateral proceedings following direct State review or expiration of the time for seeking direct State review, except that, in a State with a unitary review system under which direct review and collateral review take place concurrently, the term includes the collateral review aspect of the unitary review process.

#### **§ 26.22 Requirements.**

A State meets the requirements for certification under 28 U.S.C. 2261 and 2265 if the Attorney General determines each of the following to be satisfied:

(a) The State has established a mechanism for the appointment of counsel for indigent prisoners under sentence of death in State postconviction proceedings. As provided in 28 U.S.C. 2261(c) and (d), the mechanism must offer to all such prisoners postconviction counsel, who may not be counsel who previously represented the prisoner at trial unless the prisoner and counsel expressly request continued representation, and the mechanism must provide for the entry of an order by a court of record—

(1) Appointing one or more attorneys as counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) Finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) Denying the appointment of counsel, upon a finding that the prisoner is not indigent.

*Example 1.* A State provides that attorneys in a public defender's office are to be appointed to represent indigent capital defendants in State postconviction proceedings in capital cases. The counsel appointment mechanism otherwise satisfies the requirements of 28 U.S.C. 2261(c) and (d).

Such a mechanism would satisfy the chapter 154 requirement relating to appointment of counsel.

*Example 2.* A State provides that in any capital case in which a defendant is found to be indigent, the court shall appoint counsel for State postconviction proceedings from a list of attorneys available to represent defendants in a manner consistent with 28 U.S.C. 2261(c) and (d). Such a mechanism would satisfy the chapter 154 requirement relating to appointment of counsel.

*Example 3.* State law provides that local jurisdictions are to determine whether counsel is appointed for indigents in State postconviction proceedings in capital cases and not all jurisdictions provide for the appointment of such counsel. This mechanism would not satisfy the chapter 154 requirement relating to appointment of counsel.

(b) The State has established a mechanism for compensation of appointed counsel in State postconviction proceedings.

*Example 1.* A State sets hourly rates and allowances for compensation of capital counsel, with judicial discretion to authorize additional compensation if necessary in particular cases. For example, State law may provide that capital counsel in State postconviction proceedings will be paid an hourly rate not to exceed \$100 for up to 200 hours of work, and that these caps can be judicially waived if compensation would otherwise be unreasonable. Such a system would meet this requirement, as the State has established a mechanism to compensate counsel in State postconviction proceedings.

*Example 2.* A State provides that attorneys in a public defender's office are to be appointed to serve as counsel for indigent defendants in capital postconviction proceedings. The attorney's compensation is his or her regular salary provided by the public defender's office. Such a system would meet the requirement of establishing a mechanism to compensate counsel in State postconviction proceedings.

*Example 3.* A State appoints attorneys who serve on a volunteer basis as counsel for indigent defendants in all capital postconviction proceedings. There is no provision for compensation of appointed counsel by the State. Such a system would not meet the requirement regarding compensation of counsel.

(c) The State has established a mechanism for the payment of reasonable litigation expenses.

*Example 1.* A State may simply authorize the court to approve payment of reasonable litigation expenses. For example, State law may provide that the court shall order reimbursement of counsel for expenses if the expenses are reasonably necessary and reasonably incurred. Such a system would meet the requirement of establishing a mechanism for payment of reasonable litigation expenses.

*Example 2.* A State authorizes reimbursement of counsel for litigation expenses up to a set cap, but with allowance for judicial authorization to reimburse expenses above that level if necessary. This

system would parallel the approach in postconviction proceedings in Federal capital cases and in Federal habeas corpus review of State capital cases under 18 U.S.C. 3599(a)(2), (f), (g)(2), which sets a presumptive cap of \$7,500 but provides a procedure for judicial authorization of greater amounts. Such a system would meet the requirement of establishing a mechanism for payment of reasonable litigation expenses as required for certification under chapter 154.

*Example 3.* State law authorizes reimbursement of counsel for litigation expenses in capital postconviction proceedings up to \$1000. There is no authorization for payment of litigation expenses above that set cap, even if the expenses are determined by the court to be reasonably necessary and reasonably incurred. This mechanism would not satisfy the chapter 154 requirement regarding payment of reasonable litigation expenses.

(d) The State provides competency standards for the appointment of counsel representing indigent prisoners in capital cases in State postconviction proceedings.

*Example 1.* A State requires that postconviction counsel must have been a member of the State bar for at least five years and have at least three years of felony litigation experience. This standard is similar to that set by Federal law for appointed counsel for indigent defendants in postconviction proceedings in Federal capital cases, and in Federal habeas corpus review of State capital cases, under 18 U.S.C. 3599(a)(2), (c). Because this State has adopted standards of competency, it meets this requirement.

*Example 2.* A State appoints counsel for indigent capital defendants in postconviction proceedings from a public defender's office. The appointed defender must be an attorney admitted to practice law in the State and must possess demonstrated experience in the litigation of capital cases. This State would meet the requirement of having established standards of competency for postconviction capital counsel.

*Example 3.* A State law requires some combination of training and litigation experience. For example, State law might provide that in order to represent an indigent defendant in State postconviction proceedings in a capital case an attorney must—(1) Have attended at least twelve hours of training or educational programs on postconviction criminal litigation and the defense of capital cases; (2) have substantial felony trial experience; and (3) have participated as counsel or co-counsel in at least five appeals or postconviction review proceedings relating to violent felony convictions. This State would meet the requirement of having established standards of competency for postconviction capital counsel.

*Example 4.* State law allows any attorney licensed by the State bar to practice law to represent indigent capital defendants in postconviction proceedings. No effort is made to set further standards or guidelines for such representation. Such a mechanism would not meet the requirement of having

established standards of competency for postconviction capital counsel.

#### **§ 26.23 Certification process.**

(a) An appropriate State official may request that the Attorney General determine whether the State meets the requirements for certification under § 26.22.

(b) The request shall include:

(1) An attestation by the submitting State official that he or she is the "appropriate State official" as defined in § 26.21; and

(2) An affirmation by the State that it has provided notice of its request for certification to the chief justice of the State's highest court.

(c) Upon receipt of a State's request for certification, the Attorney General will publish a notice in the **Federal Register**—

(1) Indicating that the State has requested certification;

(2) Listing any statutes, regulations, rules, policies, and other authorities identified by the State in support of the request; and

(3) Soliciting public comment on the request.

(d) The State's request will be reviewed by the Attorney General, who may, at any time, request supplementary information from the State or advise the State of any deficiencies that would need to be remedied in order to obtain certification. The review will include consideration of timely public comments received in response to the **Federal Register** notice under paragraph (c) of this section, and the certification will be published in the **Federal Register**, if certification is granted.

(e) Upon certification by the Attorney General that a State meets the requirements of § 26.22, such certification is final and will not be reopened. Subsequent changes in a State's mechanism for providing legal representation to indigent prisoners in State postconviction proceedings in capital cases do not affect the validity of a prior certification or the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed during State postconviction proceedings in the case. If a State with a certified mechanism amends governing State law to change its mechanism in a manner that may affect satisfaction of the requirements of § 26.22, the certification of the State's mechanism prior to the change does not apply to the changed mechanism, but the State may request a new certification by the Attorney General that the changed mechanism satisfies the requirements of § 26.22.

Dated: May 29, 2007.

**Alberto R. Gonzales,**  
*Attorney General.*

[FR Doc. E7-10892 Filed 6-5-07; 8:45 am]

**BILLING CODE 4410-18-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 180**

[EPA-HQ-OPP-2006-0175; FRL-8129-2]

#### **Pesticides; Food Packaging treated with a Pesticide; Reopening of Comment Period**

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

**ACTION:** Proposed Rulemaking; reopening of the public comment period.

**SUMMARY:** EPA is reopening the public comment period for a proposed rule concerning pesticide-treated food packaging published in the **Federal Register** of April 6, 2007. Written comments were required to be submitted by April 21, 2007. EPA is reopening the comment period because the Agency received, considered and accepted a petition to extend the public comment period. This document reopens the comment period for an additional 30 days.

**DATES:** Comments must be received on or before July 6, 2007.

**ADDRESSES:** Follow the detailed instructions provided under **ADDRESSES** in the proposed rule published in the **Federal Register** of April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mari L. Duggard, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0028; fax number: (703) 308-7026; e-mail address: [duggard.mari@epa.gov](mailto:duggard.mari@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

The Agency identified in the proposed rule those who may be potentially affected by that action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### *B. How and to Whom Do I Submit Comments?*

To submit comments, or access the public docket, follow the detailed