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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 278

[Amendment No. 380]

RIN 0584–AC05

Food Stamp Program: Retailer Application Processing

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to revise the initial application processing timeframe for retail food stores and wholesale food concerns that apply for authorization to accept and redeem food stamp benefits and clarify verification requirements. In addition to lengthening the time allowed for processing applications, this rule would clarify Food and Nutrition Service (FNS) regulatory authority to require specific documentation from an applicant to verify a firm's eligibility. This rule will also incorporate two provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, related to the collection of tax information from applicant firms or from firms being reauthorized in the program, and the provision of written permission for FNS to verify such information with appropriate agencies. These changes are being proposed as a means to ensure that only legitimate food stores are allowed to participate in the Food Stamp Program.

DATES: Comments must be received on or before January 3, 2000 to be assured of consideration.

ADDRESSES: Comments should be submitted to Karen J. Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may also be data faxed to the attention of Ms. Walker at (703) 605–0232. All written comments will be open for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 706.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Ms. Walker at the above address or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purpose of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–602). The Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities. The rule would have almost no impact on the majority of applicant firms, most of which are legitimate food stores.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice announces our intent to collect additional information associated with the application completed by retail food stores and meal services to request approval to participate in the Food Stamp Program (FSP) and to obtain approval for 3 years on the revised burden estimates.

Comments on this notice must be submitted by January 3, 2000.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lori Shack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20502 (a copy may also be sent to Karen J. Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. For further information, or for copies of the information collection, please contact Ms. Walker at the above address.)

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

Title: Food Stamp Program Store Applications.

OMB Number: 0584–0008.

Expiration Date: October 31, 2002.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the Department of Agriculture is the Federal agency responsible for the FSP. The Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011–2036), requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FNS' responsibility is to accept applications from retail food establishments and meal service programs that wish to participate in the FSP, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application

information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

There are currently 3 application forms approved under OMB No. 0584–0008. Together these forms are used by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and State-contracted restaurants, to apply to FNS for authorization to participate in the FSP. Form FNS–252, Food Stamp Application For Stores is generally used by stores, excluding facilities which provide meal services such as communal dining, shelters and other meal service programs, which are newly applying for authorization; Form FNS–252R, Food Stamp Program Application For Stores—Reauthorization is used by the majority of currently authorized stores to apply for reauthorization, excluding facilities which provide meal services such as communal dining, shelters and other meal service programs; and Form FNS–252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others generally used by communal dining and restaurant facilities and other food service programs which are newly applying or applying for reauthorization. In a few cases, at the discretion of the FNS field offices, some stores would be required to complete Form FNS–252 to apply for reauthorization. Section 9(c) of the Act provides the necessary authorization(s) to collect the information contained in these forms.

We do not collect information on the number of FSP applications received annually. Current burden estimates associated with these 3 application forms are determined from information maintained in STARS (Store Tracking and Redemption System) based on the total number of currently authorized stores or the number of newly authorized stores. The number of expected applications is divided between initial applications from new applicants and applications for reauthorization from currently authorized stores.

For burden estimates associated with new applicants (initial authorizations), we used the number of stores (all types) newly authorized/approved currently estimated at 20,696 (rounded to 20,700) based on FY 1997 year-end data from STARS and inflated this number by 10% (2,070) to account for denied applications received for a total of 22,770 applications expected to be received and processed from stores annually. It is estimated that 98% (22,315) of the 22,770 applications expected to be received would be on Form FNS–252 and 2% (423) would be on Form FNS–252–2. In addition, an estimated 32 private restaurants applying for FSP participation in the State-administered special restaurant program annually will use Form FNS–252 versus Form FNS–252–2 to apply for participation reducing the number of expected applications for Form FNS–252–2 by 32 and increasing the number of expected applications using Form FNS–252 by the same amount.

For burden estimates associated with firms applying for reauthorization, we used the total number of stores (all types) authorized (184,300) as of December 1997. Generally, authorized stores are subject to reauthorization at least once every 4 years. Thus, it is estimated that 25% (46,000) of all authorized stores would be subject to reauthorization in any given year. Using the number of authorized stores as of December 1997, it is estimated that 46,000 reauthorization applications would be expected to be received annually. Of the 46,000 reauthorization applications expected, it is estimated that 96% (44,160) will be on Form FNS–252R, 3% (1,380) will be on Form FNS–252–2, and 1% (460) will be on Form FNS–252.

The number of respondents completing at least 1 of the 3 applications in question annually, as currently approved by OMB, is as follows:

FNS–252		
New authorizations	22,347	(22,770 × .98 + 32)
Reauthorizations	460	(184,000 × .25 × .01)
	22,807	
FNS–252–2		
New authorizations	423	(22,770 × .02 − 32)
Reauthorizations	1,380	(184,000 × .25 × .03)
	1,803	
FNS–252R		
Reauthorizations	44,160	(184,000 × .25 × .01 −1,380 − 460)
Total responses	68,770	

It should be noted that the number of applicant and authorized stores has been declining over the past few years due to several program changes, such as changes in eligibility requirements, stronger sanctions against violators, and implementation of Electronic Benefit Transfer systems. These declines have resulted in a reduction in the overall number of applications expected to be received annually.

Hourly burden time per response varies by type of application and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application, and submit the form and documentation to FNS.

As currently approved by OMB, the hourly burden rate per response for: (1) Form FNS–252 is 20 to 68 minutes, with the average being 27.5 minutes; (2) 10 to 20 minutes for Form FNS 252–2, with the average being 12 minutes; and, (3) 7 to 8 minutes, with the average being 7.5 minutes for Form FNS–252R.

Information Collection—Proposed Rule

This proposed rule at § 278.1(b) requires that applicant firms submit copies of income and sales tax filing documents to the FNS if requested during the application or reauthorization process. The proposed rule further provides that FNS can deny a firm's application if they do not supply requested documentation. Lastly, the proposed rule would require firms to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies, and to obtain corroborating documentation from other sources as deemed necessary. These new requirements will not result in changes to current burden estimates or

methodologies used to arrive at current burden estimates as approved by OMB, because: (1) Currently approved burden estimates already include time associated with collecting, copying and submitting this type of documentation, or other sufficient documentation, to FNS. The new proposal simply allows FNS to mandate the submission of a particular type of document, such as sales and tax filing documents and to deny applications which do not provide the specific documentation; and (2) FNS would design a standard release form for the purpose of the new requirement to sign a release form. This would be a one-time burden for new applicants, including applicants for reauthorization. It is estimated that burden associated with a one-time requirement to affix a single signature to a standard form would be minimal and is not being assessed separately.

The burden estimates, as approved by OMB through October 31, 2002, are shown below:

Affected Public: Food retail and wholesale firms, meal service programs, certain types of group homes, shelters, and State-contracted restaurants.

Estimated Number of Respondents: 68,770.

Estimated Number of Responses per respondent: 1.

Estimated Time per Response: 0.229413.

Estimated Total Annual Burden: 15,777.

SUMMARY OF BURDEN ESTIMATES FOR FORMS FNS–252, 252–2 AND 252R

Title	Number of respondents	Responses per respondent	Total annual responses	Burden hours per response	Total annual burden hours
Form FNS–252	22,807	1	22,807	.4500	10,263
Form FNS–252–2	1,803	1	1,803	.2000	361
Form FNS–252R	44,160	1	44,160	.1167	5,153
Totals	68,770	1	68,770	.....	15,777

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) For State Agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out as 7 CFR 276.7 (for rules related to non-quality control liabilities) or part 284 (for rules related to quality control liabilities: (3) For Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) Public Law 104–04, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) which impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the URMA.

Background

The authorization of retail food stores and wholesale food concerns to accept and redeem food stamp benefits is the responsibility of the Department's FNS Field Offices. This rule makes four changes, two discretionary and two reflecting additional authorities provided by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The discretionary changes alter the timeframe within which FNS must approve or reject a firm's application, and specify types of documents firms might be asked to provide. The PRWORA changes authorize the Department to require that applicant firms sign a release form allowing FNS to verify the accuracy of information submitted by firms, and that FNS may request the submission of tax records.

Application Processing Timeframes

Current rules at 7 CFR 278.1(a) provide that an FNS officer in charge shall deny or approve authorization, or request more information, within 30 days of receipt of the firm's application. If FNS returns an incomplete application and/or requests more documentation from the applicant, the 30-day time clock then stops until a fully completed application and/or the additional information is received from the applicant, at which point FNS has a full 30 days to approve or deny authorization.

Current rules do not define a completed application. This proposed rule would clarify what is meant by a completed application. It is proposed that a completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to a completed application form, all required information and documentation from the applicant, as well as all needed third-party verification and documentation. In most instances, the current rule is adequate to ensure the eligibility of a firm. Current rules become problematic, however, when the field office is not familiar with the store, or needs more information about the firm's qualifications to determine whether it is a legitimate retail food store. Experience has shown that, in such cases, a visit is necessary to verify the nature and scope of a firm's

business in questionable circumstances. FNS is proposing in this rule that Field Offices have a 45-day time period in order to process completed applications and to make any needed store visits.

On site-visits may be conducted during the 45-day period by employees of FNS or by a designee of the Secretary of Agriculture (such as a firm under contract to USDA) or by an official of a State or local government. In the interest of efficiency and the responsible use of resources, on-site visits must be carefully planned and clustered in geographic areas. Thus, the 45-day period following the receipt of a completed application is necessary to allow additional time to effectively plan and carry out these on-site visits, and to allow the field office to make a determination as to whether the firm qualifies for authorization.

In order to address this need, FNS is proposing in this rule that the field office shall have 45 days from the receipt of a completed application to approve or deny the application. FNS is confident this will allow sufficient time to conduct an on-site visit if necessary and to make a final determination as to whether a store qualifies for authorization to participate in the FSP.

Information for Verifying Eligibility for Authorization

Current rules do not specify the types of documentation which firms may be required to provide when applying for authorization. In the interest of program integrity, however, it is necessary that FNS stipulate its specific authority to require firms to provide verification and documentation to determine a store's eligibility. This proposed rule (7 CFR 278.1(b)) identifies the type of documentation that may be required by FNS by stipulating that such information may include, but not be limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records and invoice records.

Tax Records

Section 833 of the PRWORA amends section 9 of the Food Stamp Act and provides the Secretary with the authority to require applicant firms to submit copies of relevant income and sales tax filing documents when applying for participation or continued authorization in the program. Firms that are applying for initial authorization or reauthorization in the FSP may now be required to submit copies of relevant business related income and sales tax filing documents to FNS as a condition of eligibility for program participation. Failure of a firm to provide such documentation if requested by FNS would serve as a basis for the denial of such a firm's application for authorization or of a firm's reauthorization in the program. This program change is reflected in 278.1(b). Since this is a statutory provision over which the Secretary has no authority to amend, implementation of this provision cannot be affected by public comment.

Authorization To Verify Tax Filings and Other Documentation

Section 833 of PRWORA also permits the Secretary to implement, through regulations, a requirement that firms provide, upon request, written authorization to allow FNS to verify all relevant tax filings and to obtain corroborating documentation from other sources so that the accuracy of information provided on the application by stores and concerns may be verified. Section 278.1(b) of the regulation proposes to require that all firms provide written authorization for FNS to verify all relevant business tax filings with appropriate agencies and for FNS to obtain corroborating documentation from other sources so as to ensure that the accuracy of information provided by stores and concerns may be verified. Examples of the types of agencies that could be contacted for the purpose of verifying applicant information include, but are not limited to wholesale suppliers, State or local licensing agencies, State or local liquor and lottery control boards, financial institutions, Federal and State income and sales tax agencies, and Federal, State or local law enforcement agencies. Retailers will be requested to complete a general release form that would provide permission for FNS to access information maintained by any agency or entity that has information directly related to the information requested by FNS on FSP application materials.

This authority will greatly enhance the ability of FNS to ensure that only legitimate stores are authorized to participate in the program and that no false information is filed on the FSP application. This is applicable to all firms, whether new or currently participating firms seeking reauthorization in the program.

List of Subjects in 7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesalers, Penalties.

Accordingly, 7 CFR part 278 is proposed to be amended as follows:

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

1. The authority citation for part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 278.1:

a. Paragraph (a) is amended by removing the last sentence and adding three new sentences in its place; and

b. The introductory text of paragraph (b) is revised.

The revisions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* * * * FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to, a completed application form, all information and documentation from the applicant, as well as any needed third-party verification and documentation.

(b) *Determination of authorization.* An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information provided on the application form. Such documentation may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies, and to obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy and eligibility of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result

in denial of the application for authorization or withdrawal of a firm or concern from the program. In determining whether a firm qualifies for authorization, FNS shall consider all of the following:

* * * * *

Dated: October 25, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–28547 Filed 11–2–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Docket No. FV–99–703–PR1]

Proposed Olive Oil Promotion, Research, and Information Order; Reopening of Comment Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed Olive Oil Promotion, Research, and Information Order is reopened until December 3, 1999.

DATES: Comments must be received by December 3, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** (64 FR 46754; August 26, 1999). The proposed rule contains the proposal submitted by the North American Olive Oil Association (NAOOA). Prior to submitting its proposal, the NAOOA had coordinated a task force consisting of the NAOOA, the California Olive Oil Council, the Texas Olive Oil Council, and other companies involved in the olive oil business.

Under the proposed Order, first handlers and importers would pay an assessment to the proposed Olive Oil Council (Council). Assessments collected under the program, at the rate of $0.01 per pound, are expected to generate between $3 million and $4 million annually. The Council would use the assessments collected to conduct a promotion, research, and information program to maintain, develop, and expand markets for olive oil. The comment period ended October 25, 1999.

On October 22, the Task Force Coordinator requested that additional time be provided for interested persons to comment on the proposed rule. The task force coordinator stated that discussions are still taking place among industry participants and that allowing additional discussion will help to ensure that the process allows all parties to participate.

After reviewing the situation, and in accordance with the task force request, the Department is reopening the comment period for 30 additional days. This will provide interested persons a total of 90 days to review the proposed rule, perform a more complete analysis, and submit any written comments.

This delay should not substantially add to the time required to complete this rulemaking action. Accordingly, the period in which to file written comments is reopened until December 3, 1999. This notice is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Public Law 104–127, enacted April 4, 1996.

Dated: October 27, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetgable Programs.

[FR Doc. 99–28832 Filed 11–1–99; 8:51 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–12]

Michael Stein; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated July 26, 1999, filed by Michael Stein (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–2–12. The petitioner believes that the NRC regulations pertaining to deliberate misconduct and employee protection do not contain certain needed safeguards. The petitioner is requesting that the NRC regulations pertaining to employee protection and deliberate misconduct be amended to ensure that all individuals are afforded the right to respond to an NRC determination that the individual has violated these regulations.

DATES: Submit comments by January 18, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

You may also provide comments via the NRC's interactive rulemaking website (http://www.ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For